

## **The High Cost of Cheap Shipping:**

International Transport Workers Federation – Australia



Submission to the Inquiry into the increasing use of so-called  
Flag of Convenience shipping in Australia

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## 1. Introduction

- 1.1. This submission is made on behalf of the International Transport Workers' Federation (ITF) - Australia. The ITF is an international federation of transport workers' trade unions. Around 700 unions representing over 4.5 million transport workers from some 150 countries are members of the ITF. It is one of several Global Union Federations allied with the International Trade Union Confederation (ITUC).
- 1.2. The ITF has a particular focus on the shipping industry due to the early globalisation of the shipping industry. The ITF's origins lie in unions representing seafarers. The ITF administers a unique system of global union agreements that cover approximately 12,000 FOC ships and protect the social, human rights and dignity of more than 250,000 seafarers from around the world.
- 1.3. In Australia, the ITF has four Inspectors that are employed full-time to inspect international ships and assist international seafarers in Australian ports, and a network of ITF Contacts that are trained in this work and assist on a part-time basis. These inspectors board approximately 700 ships per year, in addition to assisting multiple seafarers that contact them by text, email and telephone and through maritime workers in Australian ports. The Australian ITF Inspectorate has been active since the 1980s.
- 1.4. A short video title 'Fighting for better seas' explains the ITF's campaigns in the shipping industry: <https://www.youtube.com/watch?v=PwaE4S5Yb1g>.

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### 3. Executive Summary and Recommendations

- 3.1. The Australian shipping industry has suffered a steady decline through a number of contributing factors including unfair pressure of competition from cheap international shipping.
- 3.2. The current federal government is committed to removing any form of support for a domestic industry by even deeper deregulation of the coastal shipping trade.
- 3.3. While the three deaths on the Panamanian-registered coal carrier *Sage Sagittarius* are still being investigated by the NSW Coroner, they do highlight the potential for abuse of seafarers under a substandard regulatory regime - Flags of Convenience.
- 3.4. The ITF has been successful in having more than 12,000 ships regulated by international collective agreements but still need an ongoing active network of dedicated inspectors to police the agreements. One indication of the extent of violations is that this Inspectorate recovered almost \$60 million USD in wages last year alone. Apart from stolen wages, the world wide inspectorate regime deals with an increasing list of breaches of human and workers' rights.
- 3.5. If the Australian government's current agenda is realised, it will sound the death knell for Australian-flagged shipping. The Australian Senate and the Australian public should understand what the consequences could be and the potential impact it will have on our exposed and vulnerable coastline.
- 3.6. Central and most urgent of these considerations is national security. While every part of Australia's transport logistic chain has been strengthened and regulated in the wake of a heightened counter-terrorism environment, the opposite is true for coastal shipping. All Australian national maritime workers accept the most stringent and onerous criminal and security background checks, while the international workers that shipowners use to replace domestic crews need only apply online for a low grade visa. This in itself should sound alarm bells in our security and crime agencies, particularly in the multi-billion dollar domestic oil and gas industry, but has developed into a political lever at the expense of security.
- 3.7. Australia has failed to build strong social partners to include the maritime workforce in our national security framework. Rather, ideology has driven deep divisions between agencies, employer groups, workers and industry, leaving enormous gaps in domestic security.
- 3.8. We look to the US for the strongest example of how to build and sustain a shipping industry involving unions and its members as allies against national threats. The US *Merchant Marine Act 1920* or "Jones Act" and associated regulations regard a robust and well trained national

merchant marine as an essential resource in the 4th line of defence behind Army, Air Force and Navy.

- 3.9. The environment and natural treasures like the Great Barrier Reef are put at immediate risk through irresponsible shippers and shipowners, and even the regulation around deliberate dumping and accidental spills is not enough to protect Australia from crippling cleanup bills. The very elements of cheap shipping are those that conspire to harm our pristine coast.
- 3.10. Australia's base of experienced mariners who are needed as tug masters, harbour masters, stevedoring managers, logistics supervisors, port state control inspectors are now at their lowest mark and will continue to fall along with the demise of the domestic industry. While we boast a number of high quality training centres like the Australian Maritime College, and an eager supply of young entrants, there are few berths on board ships to gain practical experience in our shrinking industry.
- 3.11. The alternative to a highly-trained, well-motivated and security-screened domestic workforce may be "cheap" at first glance, but the alternative is Flags of Convenience ships with low paid, vulnerable and often exploited seafarers from developing nations. Invariably this will lead to a high cost to Australian jobs, economy, national security and the environment.
- 3.12. In this Submission we draw on our constant practical experience of dealing with international seafarers and the seagoing industry to provide insight into the functioning of the industry, and the significant risks and gaps that exist. These include:
- Concerns about the integrity of the Maritime Crew Visa system and the way the Australian government persists in trying to extend it (Section 6).
  - The case of the *Sage Sagittarius* reveals that there are little restrictions on seafarers with customs 'alerts' travelling to Australia – in this case on a ship where the captain was selling automatic handguns to the crew and possibly others, and where three suspicious deaths took place on board over six weeks, two in Australia (Section 0).
  - The MLC is an enormous step forward, but contains no minimum wage, a requirement only to record hours of rest (not work) which can lead to extraordinary working hours, no requirement to record seafarers' next of kin, and very significant gaps in the monitoring of fatalities, injuries and diseases among seafarers.
  - International seafarers are allowed to work up to 91 hours per week, 98 hours in 'exceptional circumstances' of up to two weeks. With these hours, many work for up to 12 months continuously with few days off, operating hazardous heavy machinery. Yet a 2014 Inspection Campaign on hours of rest by the Pacific and North Atlantic basin Port State Control inspectorates (Tokyo MoU and Paris MOU, includes Australia) found 'unsatisfactory compliance' with even these standards (Section 10).

- Australian fatigue standards say that anything over 50 hours per week is problematic, and “may lead to errors and an increase in incidents and injuries”.
- Maritime authorities around the world have recognised that fatigue is a contributing factor to many maritime accidents and environmental disasters.
- Shipping companies are still continuously trying to steal workers’ wages: the ITF collected \$2 million in back wages for seafarers in Australia and \$59 million globally (Section 10).
- Five years after creating the largest single damage to the Great Barrier Reef, the clean-up and remediation of the *Shen Neng 1* impact site is still incomplete, with toxic materials scattered over a 400,000m<sup>2</sup> area and the Commonwealth suing shipowners in the Federal Court for \$194 million in damages (Section 9).
- The *Rena* disaster in New Zealand showed the real difficulty for Port State Control (PSC) in improving safety management systems on board ships. PSC inspectors were on board the ship 6 times in the preceding 12 months, including 3 times in Australia, and the same problems kept recurring, going back to the safety management systems on board (Section 9).
- Despite a plethora of environmental conventions and legislation, the limit of liability for shipowners responsible for bunker oil spills is still far too low to compensate for the damages such spills can cause. Virtually all ships carry heavy, damaging and toxic bunker oil as fuel (Paragraph 9.43).
- In 2014, AMSA found reason to detain an international ship on average every 32 hours, an action that is only taken to prevent ‘danger to the ship or persons on board’ or ‘an unreasonable threat of harm to the marine environment’ (Paragraph 9.10)
- International shipowners are not required to make any systematic contribution to seafarers’ welfare. This is left to charities or the ITF. In the past 10 years grants from the ITF Seafarers’ Trust to organisations and services assisting international seafarers totalled £1,189,173 GBP (approximately \$A 2.5 million at 2015 exchange rates) (Section 17).
- The Department of Infrastructure and Regional Development has seen fit to significantly reduce the Protection of the Sea levy while toxic materials still sit on the Great Barrier reef and the money for clean up does not exist. It has also left the levies that pay for safety inspections and nautical markers for ocean hazards (Aids to navigation) at 2004 levels, without a provision for cost-of-living increases. There is no levy to pay for seafarers’ welfare services (Paragraph 9.85, Section 19).



3.13. We believe that the international shipping industry is currently not paying its fair share for its security, social, and environmental impact in Australia, and, supported by the current federal government, is presently encouraging a race to the bottom in all these areas which will impact on Australian society and our environment.

3.14. The recommendations we provide largely fall into three categories:

- Recommendations to Australian authorities to bridge the gap and encourage the industry to reduce its negative impact and to pay its fair share.
- Recommendations to support the Australian shipping industry in the face of this unfair competition. Ultimately, the ITF believes in ‘elimination of the FOC system and the establishment of a regulatory framework for the shipping industry that is based on the concept of a genuine link between the flag a ship flies and the place where it is beneficially owned and controlled’.<sup>1</sup>
- Recommendations to the Australian government to take to international agencies to improve the regulation of the international shipping industry in the long run.

3.15. Despite the discrete recommendations outlined below, it must be remembered that all aspects of the shipping industry are interconnected. Working conditions for seafarers have a strong impact on the fatigue they suffer and subsequent risk of environmental disasters on the ships they sail around the coast. Companies that practice double-bookkeeping and who do not pay agreed wages to seafarers are frequently also cut corners in other areas.

3.16. This Inquiry into the increasing use of so-called Flag of Convenience shipping in Australia is a timely opportunity to consider the effect the world’s cheapest standard of shipping will have on the Australian economy, security and environment – and what we can do to stop this from happening.

#### **Recommendations of the ITF:**

**Recommendation 1:** The ITF supports measures to retain and support an Australian national fleet of ships, and encourages the Australian government to do the same.

**Recommendation 2:** The Office of Transport Security should be tasked with a factual assessment of the ability of Australia’s crime agencies, Immigration, ASIO and AG to background check visiting international seafarers from all countries, and the integrity of the systems they rely on.

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<sup>1</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Statement of objectives, p.10.

**Recommendation 3:** The Office of Transport Security should work with social partners including the maritime unions to conduct a security based gap analysis of the MCV compared to MSICs, particularly in relation to fuel and High Consequence and Dangerous Cargos.

**Recommendation 4:** Australia should lobby at an international level for Port State Control detention, deficiency and casualty records to include all deaths and outcomes of investigations on board ships trading to and from each country.

**Recommendation 5:** The investigators of any maritime incidents should be aware that international crew may have good reason to feel that cooperation with Australian authorities could result in them being blacklisted or threats being made to themselves or their families. Seafarers should be given the option of giving evidence in confidence and disguising their identity. However, investigators must also be aware that the need to travel internationally in coordination with ship's schedules and forgo employment during this period may still prevent seafarers from being able to properly assist Australian authorities.

**Recommendation 6:** Full whistleblower protections including asylum in Australia should be offered for crewmembers and their families who are witnesses to critical maritime incidents which affect Australia's security, environment or safety.

**Recommendation 7:** As the precarious employment and vulnerability of seafarers, and the need to investigate maritime incidents, is common around the world, AMSA should investigate what steps are taken in other countries to protect witnesses and facilitate their cooperation with maritime authorities.

**Recommendation 8:** Australia should seek to have whistleblower protections for maritime investigations embedded into the Maritime Labour Convention.

**Recommendation 9:** AMSA should investigate what practical mechanisms are in place for Flag States to share information about investigations and annual reports relevant to Australia. A list of those Flag State investigations into incidents in Australian waters should be included in AMSA's annual Port State Control report on international shipping to Australia.

**Recommendation 10:** That the Australian Government amend the Coastal Trading (Revitalising Australian Shipping) Act 2012 and or the Liquid Fuel Emergency Act 1984 to require a level of "Australian connection or content" in the transportation components of critical economic imports, particularly energy such as refined petroleum products, but others such as high consequence cargos (e.g. ammonium nitrate), high security cargos (e.g. weapons, munitions, explosives) and dangerous cargos (e.g. Aviation gas, other liquid and gas fuel) as well as high value exports, such as LNG.

**Recommendation 11:** The Protection of the Sea Levy paid by ships to AMSA should fund free oily water collection facilities throughout Australian ports in order to reduce the incentive for illegal dumping of oily wastes.

**Recommendation 12:** The Protection of the Sea Levy paid by ships to AMSA should fund free garbage collection throughout Australian ports in order to reduce the incentive for illegal dumping of rubbish.

**Recommendation 13:** The penalty for illegally dumping rubbish should be greatly increased to act as a deterrent and more effort should go into identifying the source of garbage dumped and fines should include the cost of cleanup and identification.

**Recommendation 14:** That AMSA maintain its full specialised maritime safety responsibilities for the inspection of cargo handling equipment and operations in ports, and maintain and strengthen this area of Marine Order 32 (Cargo Handling Equipment).

**Recommendation 15:** AMSA must not withdraw from port safety as per AMSA's proposed draft Marine Order 32. The Pacific Adventurer disaster demonstrates the direct connection between the safety of cargo handling equipment in port and safety at sea. The multiple state OHS regulators do not have the expertise to ensure maritime safety is consistently enforced in the very hazardous, environmentally sensitive and specialised shipping industry, particularly when it comes to specialised marine lashing and cargo stowage equipment on ships. A diminished role for AMSA as a specialist maritime regulator would be detrimental to safety of vessels, ports and the environment of Australian oceans.

**Recommendation 16:** Australia should push for a separate maximum liability to shipowners for bunker oil spills, to be included directly in the IMO *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001*. Bunker fuel is very damaging and is carried on virtually all international trading ships. The *Pacific Adventurer* and the *Rena* disasters show that the general limits on liability set in the IMO *Convention on Limitation of Liability for Maritime Claims (LLMC) 1976*, which currently apply to bunker spills, are much too low.

**Recommendation 17:** The Australian government must provide a clear account of why it is that toxic materials remain on the reef more five years after the grounding of the Sheng Neng 1, and why, despite Australia's extensive marine environmental legislation and multiple international conventions it is a party to, the resources do not exist to clean up and remediate the damage caused by the ship to the Great Barrier Reef. Steps must be taken to urgently redress this gap.

**Recommendation 18:** International marine environment protection conventions do not currently provide for damage caused to the seabed by the ship's hull, which is particularly important in the case of groundings on coral reefs. Australia should seek to have this gap addressed at the IMO.

**Recommendation 19:** AMSA should include maritime safety investigations to be formally incorporated into Port State Control inspection records, both by the Australian transport safety bureau and internationally.

**Recommendation 20:** The ATSB should investigate whether its 'Safety Actions' recommended to Tosco Keymax were transferred to the new DOC Holder 'Cosco Wallem Ship Management' and why this change of DOC Holder was made in the midst of the investigation.

**Recommendation 21:** Companies should not be able to fully contract out their safety responsibilities under the ISM Code. Their ability to do so should be recognised as a significant risk by AMSA, and Australia should seek to change this area of the ISM Code.

**Recommendation 22:** The Department of Infrastructure and Regional Development should explain why the Protection of the Sea Levy charged by AMSA to ships for pollution and emergency response was lowered by 3 cents per tonne back to the 2010 rate on 1 July 2014, when the Shen Neng 1 clean up was still outstanding. The Department should be encouraged to raise the levy to a sufficient level to begin the clean-up, while costs are being recovered from the ship owner.

**Recommendation 23:** AMSA should investigate whether the definition of a 'distinct occasion' in the Convention for Liability for Maritime Claims 1976 and the associated Limitation of Liability for Maritime Claims Act 1989 (Cth) prevents the Australian government and other governments from investigating and properly addressing the systemic problems leading to an accident, and whether these provisions should be changed.

**Recommendation 24:** In the light of the Shen Neng 1 disaster, the Australian government should investigate whether it has sufficient tools to efficiently seek damages when ships strike Australian reefs, given that these circumstances are not covered by IMO conventions. For example, s.61AHA of the Great Barrier Reef Marine Park Act 1975 (Annex C) gives the Commonwealth the right to seek remediation orders, but only through the Federal Court. Going through the Federal Court appears to be adding a significant delay to the process of seeking damages in the Shen Neng 1. Is there a more efficient process? Also, what recourse do the Commonwealth or States have if a ship strikes a reef that is not protected by the Great Barrier Reef Marine Park Act 1975, For example, the Ningaloo Reef or the Torres Strait?

**Recommendation 25:** International and FOC shipping represents a risk to Australia's coastal environment, with several examples of international owners simply not taking responsibility for environmental disasters caused by their ships. In addition to the damage caused to the marine environment, this can cause significant delay in clean-up operations and burden to Australian agencies and taxpayers.

**Recommendation 26:** Australian ships are safer for the environment due to:

- Constant inspection by AMSA,
- A high level of crew training,
- National crew with a vested interest in protecting the environment,
- Proper management of crew fatigue due to hours of work, amounts of leave, and swing lengths being in line with Australian workplace standards,
- The WHS Act prevents discrimination against workers refusing unsafe work,
- Some degree of whistle-blower protection in Australian law, and
- A union that can protect seafarers who find systemic safety or environmental problems at their work.

**Recommendation 28:** Australia should make the reduction of hours of work and increase of hours of rest a priority at the IMO and in the next round of the STCW convention.

**Recommendation 29:** Australia should lobby for hours of work and not just hours of rest to be recorded and inspected by Port State Control inspectorates.

**Recommendation 30:** The Australian government should consider the level of fatigue experienced by international seafarers to be a significant ship safety and environmental risk, and seek measures to significantly reduce the level of fatigue on international ships trading to Australia and in Australian domestic trades.

**Recommendation 31:** Temporary Licences for Australian coastal trade should not be issued to ships working with only the very minimum number of crew specified in the ship's Minimum Safe Manning document.

**Recommendation 32:** Ships issued a Temporary Licence for Australian coastal trade should conform to Safe Work Australia guidelines for fatigue.

**Recommendation 33:** Australia must push for an effective system of mandatory reporting of global seafarer fatalities, and inclusion of fatalities, injuries and diseases in the ship's accessible Port State Control record. Reporting requirements for fatalities, at a minimum, should be made a mandatory part of the MLC. A Seafarers' Welfare Levy must provide assistance to organisations assisting seafarers in these circumstances.

**Recommendation 34:** That Australia records all reported suicides and other fatalities on ships trading to, from and around the Australian coast. Suicides are currently not investigated, or go under-investigated.

**Recommendation 35:** The Australian government must recognise that the significantly poorer working conditions on international ships in comparison with Australian ships come at a cost to the

safety of shipping around Australia, its environment, and its working conditions. Increased precarity and fatigue of seafarers on international ships undermines safety management systems on board these ships. Lower wages (sometimes unpaid) and single crews working very long hours exert downwards pressures and unfair competition on Australian wages and working conditions. Employers who do not take responsibility for seafarers' injuries and illnesses or abandon seafarers put a considerable burden on Australian organisations who assist seafarers.

**Recommendation 36:** Responsibility for the enforcement of the Seagoing Industry Award 2010 Part B for international ships carrying domestic cargo should be transferred from the FWO to AMSA's Port State Control inspectorate. This is the Australian Inspectorate with expertise in enforcing safety and labour standards in the difficult area of international shipping. The FWO does not have the resources and expertise in this area to provide effective enforcement. On every occasion the FWO has procrastinated and remains out of touch with the international maritime industries.

**Recommendation 37:** The Coastal Trading Act 2012 should be amended to require that it be possible for stakeholders to determine if a vessel is currently trading in Australia under a Temporary Licence. Notification must be in advance, on a public website, and also posted on board.

**Recommendation 38:** The Coastal Trading Act 2012 should be amended to require that the Temporary Licences required to be posted on board include the contact information for the relevant enforcement agency that crew can contact for assistance - currently Fair Work Ombudsman (or any other agency that takes responsibility).

**Recommendation 39:** The Department of Infrastructure and Regional Development should adopt a less obstructive approach when dealing with inquiries from ITF inspectors and maritime unions about vessels holding Temporary Licences. Currently, the Department refuses to tell ITF inspectors if a ship is operating under a Temporary Licence, which it issues under the Coastal Trading Act 2012. This prevents seafarers from accessing entitlements they are due, and prevents problems from being resolved quickly and directly. The ITF and the Australian maritime unions should be considered a social partner for the good of international seafarers' rights.

**Recommendation 40:** Until responsibility is transferred, the FWO must have a transparent reporting system like Port State Control bodies and the DIRD.

**Recommendation 41:** As part of the Inquiry, the Committee should ask the FWO for a list of its investigations and outcomes in relation to international shipping.

**Recommendation 42:** The Australian government should examine the limitations of the ISM Code as a method for managing safety and fatigue on international ships. It should work internationally to seek to move the safety management systems on international ships to be closer to the ILO and Australian models.

**Recommendation 43:** The Australian government should acknowledge the role that employment relations and working conditions play in having effective safety and fatigue management systems on ships. In this respect, Australian ships are much safer than their international counterparts.

**Recommendation 44:** AMSA should examine the precedent in the airline industry where problematic companies or flag states are banned, instead of just single ships. Such an approach could encourage higher level dialogue between company managements and Port State Control inspectorates, and a more holistic and practical approach to addressing problems with safety management.

**Recommendation 45:** AMSA's Marine Navigation (Regulatory Functions) Levy and its Marine Navigation Levy have not increased 2004, while the CPI has increased considerably since that time. These levies should be increased to maintain funding for AMSA's essential safety services, and in particular, to ensure that resources for Port State Control are increased so that the inspection rate for international ships is in line with historical rates.

**Recommendation 46:** AMSA have done an excellent job implementing the MLC and inspectors and inspections are of high standards. However, in number of trades it is common for a large number of ships to only visit Australia irregularly, which makes it difficult for AMSA to ensure they are all of appropriate standards.

**Recommendation 47:** Until 2009 AMSA included a list of detained ships and the detainable deficiency category in its Annual Report. AMSA should return to this practice as it is presently cumbersome to access this list through AMSA's website.

**Recommendation 48:** Until 2000 AMSA included a section of its Annual Report focussing on the progress made since the Ships of Shame inquiry. Such reporting should be introduced subsequent to this inquiry.

**Recommendation 49:** Applicants for a Temporary Licence to carry Australian domestic cargo must demonstrate to AMSA that they have in place measures for compensation of seafarers for any illness, injury, disability or fatality they experience in the course of their work, or while travelling to or from work. These measures shall meet with Australian community standards.

**Recommendation 50:** AMSA should include records for serious injuries and fatalities on board ships on the Australian coast in its Port State Control reports on international shipping.

**Recommendation 51:** The Australian government should advocate to the ILO that details for seafarers' next-of-kin are required to be included in their Seafarers' Employment Agreement.

**Recommendation 52:** The Department of Infrastructure and Regional Development should adopt a less obstructive approach when dealing with inquiries from ITF inspectors and maritime unions about vessels holding Temporary Licences. Currently, the Department refuses to tell ITF inspectors if a ship is operating under a Temporary Licence, which it issues under the Coastal Trading Act 2012.

This prevents seafarers from accessing entitlements they are due, and prevents problems from being resolved quickly and directly. The ITF and the Australian maritime unions should be considered a social partner for the good of international seafarers' rights.

**Recommendation 53:** Internet should be provided to seafarers in Australian ports without cost to seafarers.

**Recommendation 54:** Shore leave is a right for all seafarer and must at all times be available to all seafarers in every port giving regard to operational requirements.

**Recommendation 55:** The Australian government should reduce the levies on Australian ships payable to the Australian Maritime Safety Authority in recognition of the reduced risk, reduced inspection burden, and the important role that the fleet plays in training seafarers and in Australia's national interest.

- The Marine Navigation Levy could be amended so that Australian domestic commercial trading vessels are exempt. The levy revenue could be maintained through a combination of increased charges for foreign registered commercial vessels, extending the charge to Defence for its vessels and imposing the charge on all foreign registered vessels (it is payable each quarter in the case of coastal trading vessels).
- The Marine Navigation (Regulatory Functions) Levy could be restructured so that it was increased for Port State Control functions (foreign registered ships visiting Australian ports) and reduced for Australian registered ships.
- The Protection of the Sea Levy could be amended so that Australian flagged domestic commercial trading vessels pay a reduced rate, while international ships pay a higher fee.

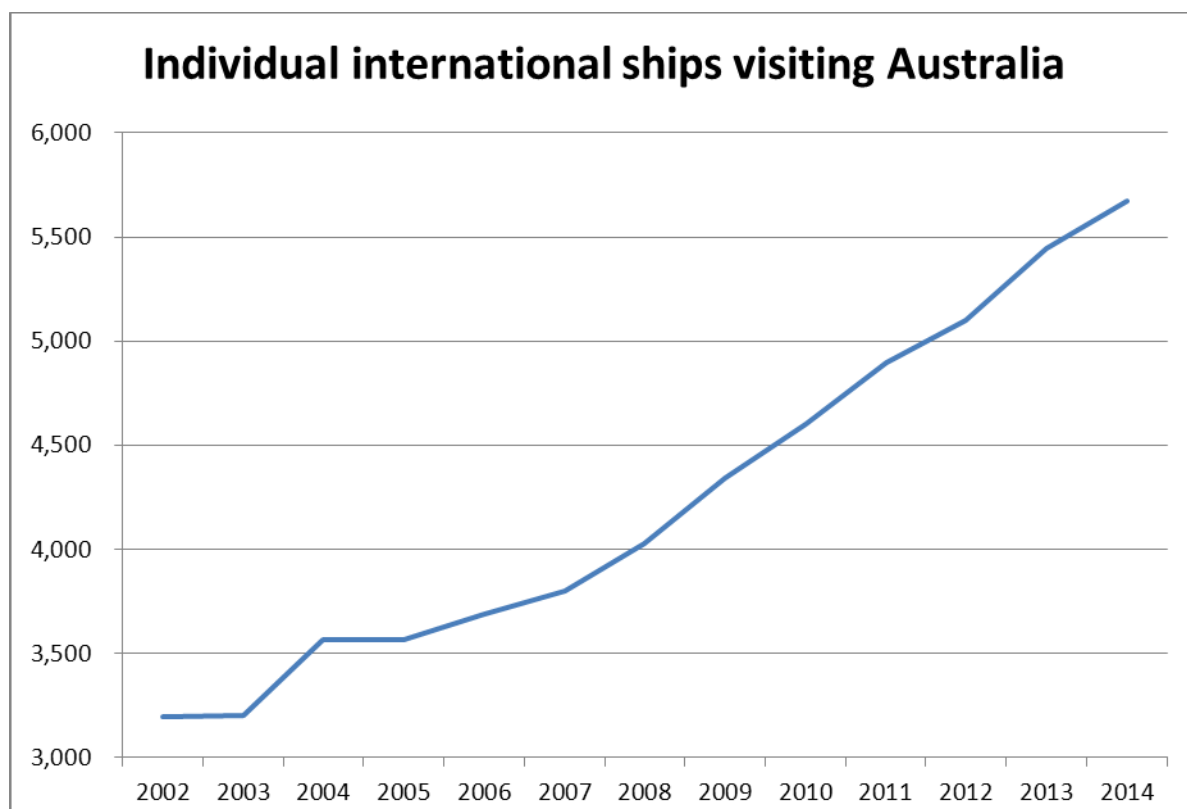
**Recommendation 56:** The Australian government should work with social partners in order to develop a sustainable fiscal model to provide the highest available quality of support to seafarers. A new Seafarers' Welfare Levy should be introduced. The levy revenue should go in part towards the enforcement of the Maritime Labour Convention and in part be administered by AMSA's Australian Seafarers' Welfare Advisory Council to support the delivery of support services to seafarers, including mental health services, seafarers' welfare centres and transportation services in ports around Australia, open to seafarers of all faiths and philosophies. This levy should only be charged to international flag ships as Australian ships already pay for the functions of Fair Work Australia, the Fair Work Ombudsman, Safe Work Australia, Medicare, and Seacare, and the state safety regulators through the Australian taxation system. Seafarers' welfare centres are also overwhelmingly used by the crew of international ships, as crew on Australian ships typically return home every four weeks.



#### 4. Number of International ships and FOCs trading in and to Australia

- 4.1. The number of international and FOC ships visiting Australia has increased 78% from 2002 to 2014: from 3,193 ships annually to 5,674 ships annually (Figure 1).<sup>2</sup>
- 4.2. In 2002 the average international ship made 5.5 visits to Australia annually, but by 2014 this had decreased to 4.7 visits annually. The result is a very large pool of international ships visiting Australia, each of which spends only a brief period of time in the country.

**Figure 1:** Individual foreign flag ships visiting Australia.

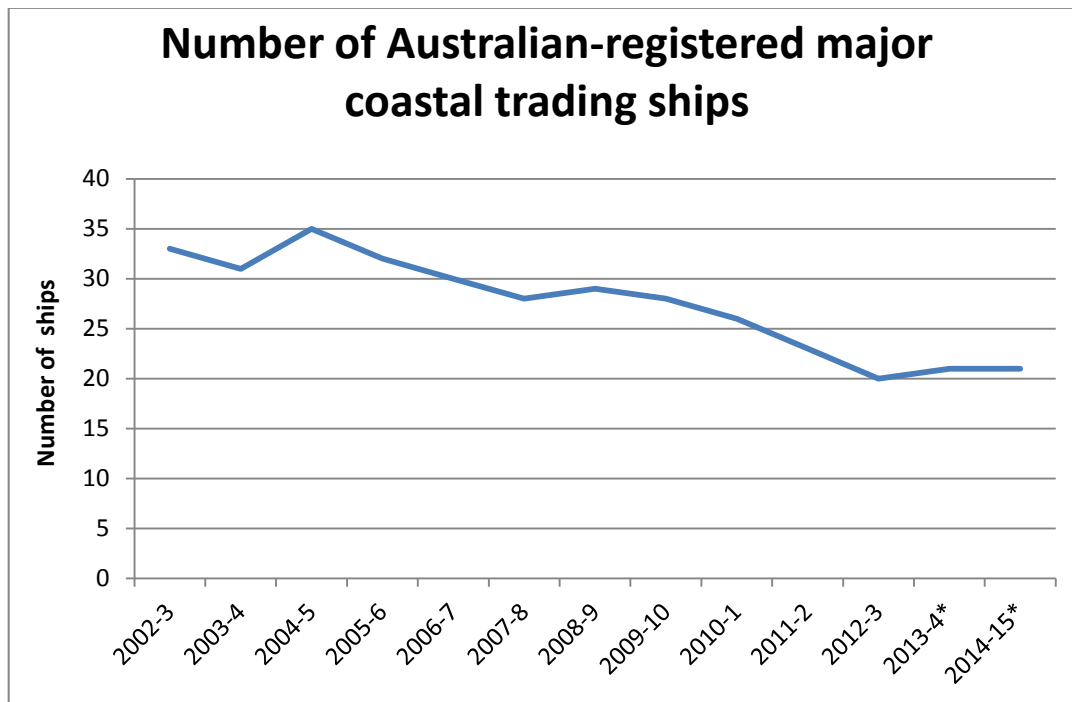


**Source:** Compiled by the ITF from AMSA, Port State Control Annual Reports 2002-2014.

<sup>2</sup> 2002 was chosen as the start date for this analysis as it is the first year AMSA reported data from its 'ShipSys' computerised tracking system 'which recorded centrally, for the first time, all port arrivals' (AMSA Port State Control 2001 report, p.4). Data from 2002 onwards is directly comparable to current data. Data before 2002 was collected on a different basis: 1. An estimate of 'eligible foreign flag ships', which is a ship not inspected in the past 6 months, or three months for a tanker over 15 months of age. Ships can be counted more than once during the year; 2. An estimate of individual ship visits to Australian ports, which also includes Australian ships. Thanks to Alex Schultz-Altmann at AMSA for explaining the difference (personal communication, 7 August 2015).

- 4.3. The total number of arrivals of international ships into different Australian ports has also increased by 53% since 2002, with 26,939 individual port calls in Australia by international ships in 2014.
- 4.4. The increasing number of ships and decreasing time these ships spend in Australia presents a growing challenge to Australia's Port State Control inspection regime.
- 4.5. The number of Australian-registered blue-water coastal trading ships over 2,000 DWT is comparatively quite small and is declining (Figure 2). Despite the small number of ships, dedicated coastal trading ships can carry very large amounts of cargo around the Australian coast, particularly when compared to international trading ships that may only make a few voyages in Australia (Figure 7). Australian-crewed ships are regulated by under constant surveillance by Australian authorities. Decent working conditions on board ensure that crews carrying hazardous cargos are not unduly fatigued. Unfortunately, this fleet has been significantly undermined by underinvestment and a lack of regulatory support in the face of unfair competition from FOCs.

**Figure 2:** Number of Australian-registered major coastal trading ships.

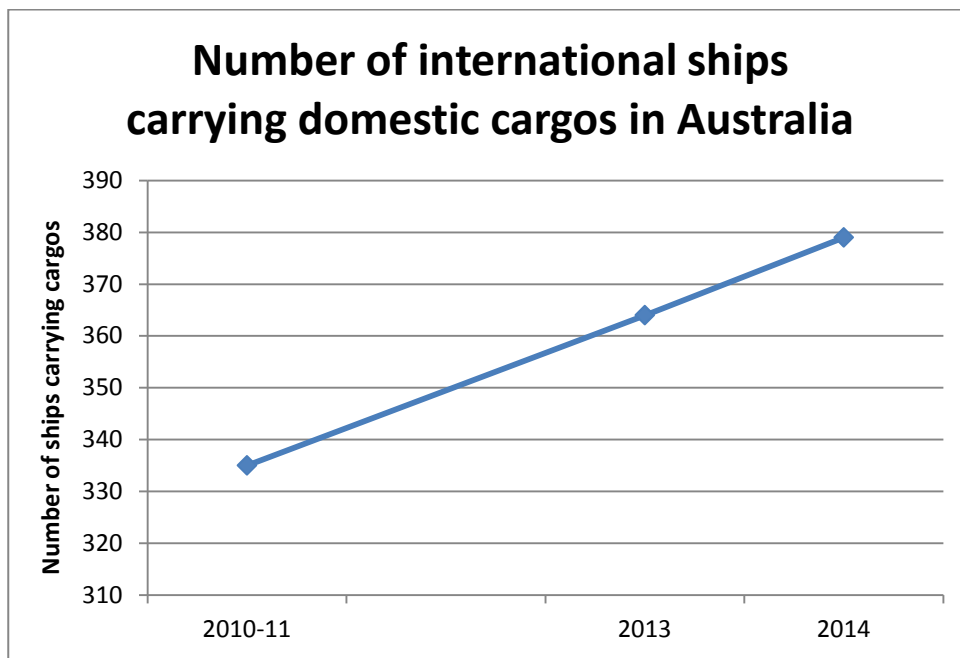


**Source:** Data from BITRE and projected forward from BITRE's definition.<sup>3</sup>

<sup>3</sup> Fleet size from 2002-3 to 2012-13 is from BITRE, 2014, *Australian Sea Freight 2012-13*, p. 61. Fleet size in 2013-14 and 2014-5 is projected using BITRE's definition of major Australian trading fleet: cargo ships owned or operated by Australian companies at the end of the financial year, over 2,000 DWT, and for which 80% or more of their voyages called at an Australian port. Excludes ships that only carry passengers.

- 4.6. Coastal cargos are also carried by international flag ships on a Temporary Licence. Under Australian legislation, a coastal cargo is defined as being loaded and discharged in Australia. The number of ships involved in carrying this cargo has steadily increased, although many of these ships may make only a few domestic voyages in addition to their international voyages (Figure 3).

**Figure 3:** Number of international ships carrying domestic cargos within Australia on Permit (2010-11) and on Temporary Licence (2013 and 2014).



**Source:** 2010-11 from permit data supplied by the Department in 2011. 2013 and 2014 data from Temporary Licence Voyage Reports available at: DIRD, [www.infrastructure.gov.au/maritime/business/coastal\\_trading/licencing/voyage\\_reports.aspx](http://www.infrastructure.gov.au/maritime/business/coastal_trading/licencing/voyage_reports.aspx)

- 4.7. The ITF 'supports the retention and extension of cabotage at a national level and recognises the importance of such arrangements to secure sustainable long-term employment for seafarers on board ships engaged in regular trades within a particular country. In order to avoid social dumping, any vessel not forming part of such arrangement, whether an FOC or non-FOC vessel, which subsequently becomes involved in the cabotage trade, must recognise standards, which have been agreed for vessels trading within the designated country.'<sup>4</sup>

**Recommendation 1:** The ITF supports measures to retain and support an Australian national fleet of ships, and encourages the Australian government to do the same.

<sup>4</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships, Cabotage*, p.20

## 5. The Regulation of FOCs and International Shipping

- 5.1. For centuries, seafarers have endured extremely difficult working conditions on the ships that employ them. Steps forward in improving these conditions were made with the formation of seafarers' unions in the late 1800s, especially in the UK, USA, India and Australia.<sup>5</sup> The first conference of the International Labour Organisation (ILO) in any specific industry was in the shipping industry in 1920. With the participation of the ITF and its seafarer member-unions, in the following years the ILO developed a number of shipping industry Conventions.
- 5.2. Seafarers' unions were able to greatly improve working conditions on ships, but found this process undermined when ship owners in traditional maritime countries began to flag the ships that they still owned in open registries in other countries. The ITF's Flag of Convenience campaign was established to address this problem in 1948. Since that time, shipping has become increasingly internationalised, and global trade has increased dramatically.
- 5.3. Most of the world's estimated 1.3 million seafarers are from Philippines, China, India, Turkey, the Ukraine and Indonesia.<sup>6</sup> Yet most ownership of ships remains in traditional maritime countries such as Germany, Greece, Japan, the UK, Norway, Denmark, Japan, Korea, the US, China and Singapore.<sup>7</sup> In between seafarers and ship owners are frequently layers of international sub-contracting that obscure the fundamental employment relationship between them.
- 5.4. The world's largest ship registers are FOCs: Panama with 21% of the world's fleet by tonnage, Liberia with 12%, and the Marshall Islands with 9%. Together with other major Flag of Convenience registers in the Bahamas, Malta, and Cyprus these flags make up over 53% of the world's deadweight tonnage.<sup>8</sup>
- 5.5. The ITF maintains that the "Flag of Convenience" system provides clear opportunities for irresponsible and often vicious ship owners and operators to exploit seafarers and to seek competitive advantage from denying crew their human and workers' rights.
- 5.6. A Flag of Convenience ship is one that flies the flag of a country other than the country of "Beneficial Ownership". Shipowners are attracted by cheap registration fees, low or no taxes, freedom to employ cheap labour, and little regulatory oversight in what has become an international race to the bottom.

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<sup>5</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave McMillan, p.173-176.

<sup>6</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave McMillan, p.86-87.

<sup>7</sup> UNCTAD, Review of Maritime Transport 2014, p.39.

<sup>8</sup> UNCTAD, Review of Maritime Transport 2014, p.44.

- 5.7. It is not uncommon for ships to be owned in one country, have their cargos managed by a different company in another country, have the ship and its crew managed from a third country, have the ship flagged in a fourth country, with crew recruited and employed by agencies in multiple other countries.
- 5.8. The ITF believes there should be a 'genuine link' between the real owner of a vessel and the flag the vessel flies, in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). There is no "genuine link" in the case of FOC registries.
- 5.9. In 2003, the Maritime Transport Committee of the Organisation for Economic Cooperation and Development (OECD) undertook a review of ship registration provisions in various ship registers. The report identified numerous ways in which corporate structures were able to facilitate anonymity such as the use of bearer shares, nominee shareholders, nominee directors, private limited companies and international business corporations. This cover ensured that any investigators, security forces, agencies and governments, would find it almost impossible to secure funds or compensation for maritime disasters, accidents or pollution.<sup>9</sup>
- 5.10. Some of these registers have poor safety and training standards, and place no restriction on the nationality of the crew. Sometimes, because of language differences, seafarers are not able to communicate effectively with each other, putting safety and the efficient operation of the ship at risk.
- 5.11. Once a ship is registered under an FOC shipowners then recruit the cheapest labour they can find, pay minimal wages and cut costs by lowering standards of living and working conditions for the crew.
- 5.12. Globalisation has helped to fuel this rush to the bottom. In an increasingly fierce competitive shipping market, each new FOC is forced to promote itself by offering the lowest possible fees and the minimum of regulation. In the same way, ship owners are forced to look for the cheapest and least regulated ways of running their vessels in order to compete, and FOCs provide the solution.
- 5.13. Since it was established, the FOC system has become pervasive in the international shipping industry and its institutions. In many ways, it foreshadowed the globalisation of other industries.
- 5.14. The ITF defines flags of convenience as:

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<sup>9</sup> Policy statement on sub-standard Shipping by the Marine Transport Committee of OECD, 2002, cited in the Report of the Secretary General: Consultative Group on Flag State Intervention. Oceans and the Law of the Sea. United Nations, March 2004.

5.14.1. Where the beneficial ownership of a vessel is found to be elsewhere than in the country of the flag the vessel is flying, the vessel is considered as sailing under a Flag of Convenience. In cases where the identification of the beneficial owner is not clear, effective control will be considered and any vessel where there is no genuine link between the flag state and the person(s), or corporate entity with effective control over the operation of the vessel shall be considered as sailing under an FOC.<sup>10</sup>

5.14.2. FOCs enable shipowners to minimise their operational costs by, inter alia, tax avoidance, transfer pricing, trade union avoidance, recruitment of non-domiciled seafarers and/or passport holders on very low wage rates, non-payment of welfare and social security contributions for their crews, using seafarers to handle cargo, and avoidance of strictly applied safety and environmental standards. As a result, FOC registers enjoy a competitive advantage over those national registers which operate with high running costs and are subject to the laws and regulations of properly established maritime administrations in the flag state. FOCs also allow shipping companies to establish complex ownership structures that are characterised by a lack of administrative and managerial accountability and transparency.<sup>11</sup>

5.14.3. The problem of FOCs is confounded by the inability and unwillingness of the flag state to enforce international minimum social standards on their vessels, including respect for basic human and trade union rights, freedom of association and the right to collective bargaining with bona fide trade unions.

5.15. The ITF does have a list of flags which it has declared to be Flags of Convenience. However, the ITF recognises that this list is not exhaustive or permanent:

‘The ITF reserves the right to declare any register an FOC if circumstances so dictate. The ITF also reserves the right to declare any ship to be an FOC ship on a ship-by-ship basis.’<sup>12</sup>

‘The ITF recognises the right of its affiliates to take action against any vessel, irrespective of flag, to secure ITF acceptable standards.’<sup>13</sup>

Such a declaration would be made taking into account the social standards and rights of seafarers outlined in paragraph 5.13.3 above.

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<sup>10</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Definition of a flag of convenience, p.12.

<sup>11</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Statement of principles, p.12.

<sup>12</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Definition of a flag of convenience, p.13.

<sup>13</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Registers not declared as FOC, p.14.

- 5.16. There are primarily four kinds of interests or faces to a State's interest under the international law of the sea: flag state, port state, coastal state, and labour supply state. Regulatory difficulties with FOCs emanate from this reality as a State could have none, some, or all four interests to varying degrees. This creates a potential internal difficulty for governments seeking to reconcile differing, and sometimes conflicting interests.
- 5.17. Ships have the nationality of the state whose flag they are entitled to fly. Under Article 94 of the United Nations Convention on the Law of the Sea (*UNCLOS*), flag states are called upon to take measures for its ships necessary to ensure safety at sea with regard, among others, to social conditions. The effect of Article 94(5) is that all parties to *UNCLOS* must comply with 'generally accepted international regulations, procedures and practices' relating to...labour conditions,' and thereby creating flag state responsibilities in respect of UN human rights treaties and ILO Conventions. Despite the clear language of *UNCLOS*, the proliferation of FOCs has meant that the requirement under Article 91 for a genuine link between a ship and the flag it flies is no longer effectively implemented. This phenomenon has led to flag States not adequately assuming jurisdiction over social matters concerning their ships as required by international law.
- 5.18. The perfunctory investigation conducted by the Panamanian authorities in the case of the *Sage Sagittarius* (Section 0 of this Submission) is a perfect example of the failure to tackle the difficult international law problem of the 'genuine link' between flag and ship.
- 5.19. In our efforts to protect the interest of seafarers the ITF has developed the Flag of Convenience Campaign (FOC campaign) prosecuted by a network of over 130 ITF Inspectors in ports throughout the world, including a team of dedicated Inspectors and a network of supporters in Australia.
- 5.20. The FOC Campaign is prosecuted in two key ways
- 5.20.1. By means of a political campaign aimed at demanding a genuine link between a ship's flag and the nationality or country of domicile of its owner, its manager and its crew members, thus completely eliminating the flag of convenience system.
- 5.20.2. A union campaign aimed at ensuring that seafarers on flag of convenience ships - irrespective of their nationality or social circumstance - are protected from being exploited by bad ship-owners.
- 5.21. **The ILO, the IMO and Port State Control**
- 5.22. A series of maritime disasters and has led to the formation of the International Maritime Organisation (IMO) developing international conventions on ship standards.

- 5.23. The development of the ILO's Maritime Labour Convention was a significant step forward in improving conditions for seafarers.
- 5.24. While Flag States of ships have responsibilities under IMO Conventions and the Maritime Labour Convention, the obvious weakening of the Flag State control of ships with the Flag of Convenience system led to the development of a comprehensive system of Port State Control - the inspection of ships in the ports that they visit. Port State Controls are globally coordinated in various ocean basins.
- 5.25. Australia is part of the Tokyo Memorandum of Understanding (MoU) on Port State Control. The Paris MoU includes most European and North American countries as members and also plays a role setting global standards. AMSA carries out Australia's Port State Control and Flag State Control responsibilities, and issues annual reports on the compliance of international shipping with IMO and ILO conventions.



## 6. National Security

- 6.1. Australia's national transport security focus changed forever following the event of 9/11 in New York. The shipping and ports community scrambled to ensure transport infrastructure, corridors and critical industries were protected.
- 6.2. It is now a matter of record that in Australia, the ITF and our affiliates worked with closely with governments, industry and others to address the challenges involved in reaching a balance between our national security in the maritime context and community standards of freedom and respect for the maritime workforce.
- 6.3. Eventually an agreed position was reached and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) legislation was introduced which included the highest background checking regime of any blue collar worker in the country.
- 6.4. Every Australian worker who requires access a security regulated zone must submit to a series of background checks. Those affected include port, port facility and port service workers, stevedores, transport operators such as train and truck drivers, seafarers on Australian regulated ships and people who work on and/or supply offshore oil and gas facilities.
- 6.5. The background checks are onerous and involve invasive criminal background record checks, immigration checks and a security assessment conducted by the Australian Security Intelligence Organisation (ASIO).
- 6.6. Those who successfully make it through the checks are issued with a Maritime Security Identification Card (MSIC). For maritime workers the MSIC has become a 'right to work card' with a list of security related offences which continue to be expanded to accommodate other crime agencies' agendas, including the Australian Crime Commission.
- 6.7. Unions have railed against the ever increasing burden of proving the member's suitability particularly as such a high level of checks is not consistent along the Australian supply chain.
- 6.8. Notwithstanding our well-documented concerns we accept our obligation towards Australia's national security regime and are convinced by the government's arguments that the maritime sector remains vulnerable, particularly as an island nation.
- 6.9. Successive federal government have failed to recognise and utilise Australian maritime workers and national seafarers in particular as a security asset. The ITF through our strong relationships with other national seafarer's organisations knows that there are examples of national legislation which provide an alternative approach.

- 6.10. The USA provides us with the clearest illustration of how that country values the role and the critical domestic contribution national seafarers provide. The *Merchant Marine Act* or “Jones” Act is a United States federal statute that provides for the promotion and maintenance of the American merchant marine. David Heindel, secretary-treasurer of the Seafarers International Union of North America, has provided the following explanation of the benefits of the Act:

The United States’ cabotage law (the “Jones” Act) has enjoyed strong bipartisan support since its enactment in 1920. Top U.S. military leaders also have consistently backed that law throughout its history.

“Cabotage laws make sense on every level, and that’s why dozens of countries around the world have their own versions of the Jones Act,” said Heindel, who also chairs the Seafarers’ Section of the International Transport Workers’ Federation. “They help boost national security and economic security while sustaining good jobs and an important part of the industrial base.”

Heindel cited a relatively recent, independent study by the highly regarded firm PricewaterhouseCoopers that concluded the Jones Act helps maintain nearly 500,000 American jobs while contributing billions of dollars annually to the U.S. economy. Some of those jobs are shipboard billets, but many others are in the yards themselves.

“Those shipyard jobs are important for our national security,” he observed. “Without those jobs, our capacity to build ships for the military would be severely weakened and might disappear altogether. Similarly, the Jones Act helps maintain a pool of civilian seafarers who are available to sail on military support ships in times of need.”

Those points have been echoed in recent weeks by four-star U.S. General Paul Selva, commanding officer of the powerful United States Transportation Command; Rear Admiral T.K. Shannon, commanding officer of the U.S. Navy’s Military Sealift Command; and other prominent U.S. leaders.

“The bottom line is it makes sense for industrialized nations to have strong cabotage laws, and that certainly includes Australia,” Heindel concluded. “Vessels sailing in domestic trades also tend to be safer and better for the environment, because they have to comply with stricter rules and regulations. The owners and operators and mariners are all accountable.”

He added that current attacks on Australian cabotage laws “are an insult not only to

Australian seafarers but to working families across the country. This move would kill jobs and weaken Australia's security. It makes no sense."

- 6.11. The Seafarers International Union (SIU) has said they would be pleased to provide this Inquiry with further details about the operation and benefits of this legislation.
- 6.12. The key message for the Australian government is to consider national seafarers as a resource in peace time, and also as a fourth line of defence in more troubled times.
- 6.13. **MSIC equivalent for international crew**
- 6.14. The only possible alternative available to an MSIC for international seafarers trading on the Australian coast is the recently introduced Maritime Crew Visa (MCV), which can in no way be considered as a reliable substitute for MSIC background checks.
- 6.15. While all Australia maritime workers are mandated to hold a current MSIC, foreign seafarers who are being employed in the Australian coastal trade need only hold a Maritime Crew Visa. The checks used for this visa offer only the most cursory excuse for a security check. Table 1 summarises the differences.
- 6.16. The MCV can be applied for online by a ship's agent who has never seen the crew in question, while the ship is at sea and on her way to Australia, with no verification of the face to check photos.
- 6.17. In the MSIC regime it is a serious punishable offence to give false evidence. In contrast, the MCV application form states: 'Please be aware that if you provide us with fraudulent documents or claims, this may result in processing delays and possibly your application being refused.'
- 6.18. Seafarers employed in the Australian livestock export trade, for example, are often from Egypt, Bangladesh and India. Other FOC operators favour more compliant crews from Philippines, Burma and Sri Lanka, while the large German FOC operator Oldendorff seeks to have even more nationalities on board to discourage union organisation. In these cases it is not unusual to have 8 or 9 different nationalities out of 20 crew.
- 6.19. If we are to maintain our high level of national maritime security and ensure integrity of our coastal cargoes and infrastructure then the Australian government needs to take stock of the value of a deep and reliable background checking system against a simple and porous visa requirement for workers who can be compromised, intimidated and exploited (See sections 0 and 14 of this Submission).

- 6.20. The Australian government simply does not have the ability to work with agencies from Afghanistan, Egypt, Sri Lanka, Russia and Indonesia to achieve the same high level guarantees available to those in Australia used by Australian agencies.
- 6.21. If the poor standards of checks related to the MCV are not enough to raise concerns then we should also consider ships like the Egyptian flagged *Wadi Safaga* in Newcastle last December. The Egyptian national fleet this ship is a part of had been suffering a heavy number of crew jumping ships in Australian ports. Not all of the crew of the Safaga received MCV yet the ship as still permitted to berth in Newcastle's coal terminal. Late at night 6 of the crew walked off the ship and were met by immigration staff ashore and were subsequently taken to a detention centre. Questions should have been asked how a ship can come alongside with unchecked crew and how often this happens?

**Table 1:** Comparison between an Australian Maritime Security Identification Card and a Maritime Crew Visa.

	<b>Maritime Security Identification Card (MSIC)</b>	<b>Maritime Crew Visa (MCV)</b>
<b>Allows</b>	ID to allow access to Maritime Security Regulated Zones	ID to allow access to Maritime Security Regulated zones and through ports to gain shore leave
<b>Identity check requirement</b>	The applicant has to prove his or her identity by way of an identity check (in a similar way to a 100 point identity check to open a bank account or apply for a passport).	A valid national passport.
<b>Other documents required</b>	Document from employers citing current operational need for the cardholder.	A valid MCV granted for the same passport.
<b>Processing time</b>	Up to 30 days	5 days, often quicker
<b>Cost</b>	\$230 for 2 years \$430 for 4 years	Free
<b>Security check</b>	A criminal history check against specific terrorism and security related offences undertaken by the Australian Federal Police. A politically motivated violence check undertaken by the Australian Security Intelligence Organisation. An Australian citizenship check or right to work in Australia check undertaken by the Department of Immigration and Border Protection. The list of Maritime related security offences continues to expand to include crimes not associated with terrorism.	A cursory check with counter terrorism watch list but in many cases the countries from which some seafarers come from have little effective relationship with the Australian government to the level required to background check (Pakistan, Afghanistan, Philippines and the Baltic states for example).
<b>Ineligible applicants and appeals</b>	Applicants found ineligible can appeal to the Secretary of the Department of Infrastructure for consideration of their individual circumstances.	MCVs are often applied for through an agent or directly from the ship by the captain. A decision to refuse the grant of a Maritime Crew visa is not reviewable by the Migration Review Tribunal. Ships are still allowed to enter Australian ports even if all the crew aren't cleared.
<b>Tax paid in Australia?</b>	Australian resident for tax purposes.	Not an Australian resident for tax purposes.

<b>Number issued each year</b>	Approximately 130,000 - confirm with Immigration Department	We estimate 200,000 - confirm with Immigration Department
<b>Validity</b>	2 years with a background check at the beginning. Federal police have live alert system and holders must surrender if they breach any MRSO.	MCV is granted for three (3) years and allows multiple entry to Australia and no ongoing checks for the life of the MCV.

## 6.22. High Consequence and Dangerous cargoes

6.23. The carriage of high consequence and dangerous goods such as weapons grade ammonium nitrate into and around our port cities on Flag of Convenience ships presents a huge risk. The ITF and AMSA have a litany of examples of where this coastal and international shipping trade has been left open to the lowest bidders.

6.24. Often 3rd world crews are mistreated and intimidated within the FOC system creating a strong environment for exploitation. These crews are not MSIC checked despite the extremely sensitive nature of the cargo. Maritime Crew Visas are inadequate and inappropriate for such high consequence cargos.

6.25. A similar situation prevails for crew on crude and product tankers. Although the quality of the ships are often higher, the standards for the crew are often not.

**Recommendation 2:** The Office of Transport Security should be tasked with a factual assessment of the ability of Australia's crime agencies, Immigration, ASIO and AG to background check visiting international seafarers from all countries, and the integrity of the systems they rely on.

**Recommendation 3:** The Office of Transport Security should work with social partners including the maritime unions to conduct a security based gap analysis of the MCV compared to MSICs, particularly in relation to fuel and High Consequence and Dangerous Cargos.

## 7. The case of the Sage Sagittarius

- 7.1. The case of the Panamanian-flag *Sage Sagittarius* highlights the significant gaps that the FOC system introduces into the regulation of the shipping industry, the vulnerability and exposure to bullying and intimidation of crew, ships trading to Australia with captain and crew carrying out questionable activities apparently unimpeded, with active security alerts in place. It also highlights the invisibility of seafarer's deaths within the main records of ships available through Port State Control and Flag State authorities.
- 7.2. The *Sage Sagittarius* is a bulk carrier which transports coal from Australia to Japan. Although the vessel is owned by the Japanese company Nippon Yusen Kaisha (NYK) Line and operated by the Japanese Hachiuma Steamship, it flies a Panamanian flag.<sup>14</sup> There is no apparent connection between the owner of the vessel and its flag but this practice allows NYK to avoid Tax and be subject to minimal regulation and, as the deaths on board demonstrates, minimal investigation of incidents on board. The manning agent who hired the all-Filipino crew is the Japanese owned -Filipino based company NYK Philippines.<sup>15</sup>
- 7.3. Coal export ships such as the *Sage Sagittarius* are an integral part of the Australian coal industry which has contributed \$35-60 billion annually to the Australian economy in recent years.<sup>16</sup> According to NYK's 2014 annual report, the company generated revenue in excess of AUD \$21 billion and employed approximately 32,342 staff.<sup>17</sup>
- 7.4. In less than 40 days, between August 30 and October 6, 2012, three men died while employed on board the ship. The first 2 deaths are the subject of an ongoing NSW Coronial Inquest.<sup>18</sup> The third death happened in Japanese waters and was not immediately linked to the previous ones. It was regarded as an accident by the Japanese Transport Safety Bureau who investigated without being informed of the two earlier fatalities.<sup>19</sup>
- 7.5. The facts are the following: On August 30 2012 the chief cook on board, Cesar Llanto, was reported missing. Thereafter the ship was diverted to Port Kembla where the Australian Federal Police officers searched the ship, conducted an investigation and gathered evidence. Their investigation determined that complaint had been made by the messman, Jesse Martinez, to another crew member<sup>20</sup> about the conduct of the Captain towards the messman. That other crew member advised the messman to contact the ITF or AMSA to

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<sup>14</sup> IHS Fairplay, Sea-web, viewed on 10 September 2015

<sup>15</sup> IHS Fairplay, Sea-web, viewed on 10 September 2015

<sup>16</sup> Australian Government Department of Industry and Science, Office of the Chief Economist, *Resources and Energy Quarterly*, June Quarter 2015, p.26 and p.32.

<sup>17</sup> NYK 2014, *Annual Financial Report*, Tokyo, Japan, viewed on 1 September 2015

<sup>18</sup> Inquest into the suspected death of Caesar Llanto & the death of Hector Collado, 2013

<sup>19</sup> Japan Transport Safety Board, Marine Accident Investigation Report, September 27 2013

<sup>20</sup> Note: The Coroner has suppressed the identity of this crew member.

complain about the mistreatment of the messman by the captain. The mistreatment includes physical assaults, humiliation, bullying and homophobic discrimination. In his interview with the Australian Federal Police, the messman revealed that his homosexuality lead him to be bullied and teased by many members of the crew including the Captain. At weekly parties he was pressured into drinking and dancing in a provocative manner for the crew's entertainment. At one such party a wedding was staged between him and another crew member. He also complained of being physically assaulted by the Captain on several occasions.<sup>21</sup>

- 7.6. The Australian Federal Police's investigation determined that the chief cook (who was the immediate superior to the messman) came to find out about the plan to speak to AMSA or the ITF and decided that he would raise the concerns with the captain on behalf of the messman.<sup>22</sup> These concerns were the focus of much discussion aboard the vessel in the days prior to the disappearance of the chief cook. On the morning of 30 August 2012 the chief cook was called to the bridge of the vessel. Sometime after approximately 8am on 30 August 2012 the chief cook left the bridge via the staircase and was never seen again.<sup>23</sup> The weather was calm. The chief cook was an extremely experienced seafarer and a committed and cautious family man who displayed no indications of mental instability.<sup>24</sup>
- 7.7. On 14 September 2012, 2 weeks after the death of the chief cook, the chief engineer Hector Collado, was found dead at the bottom of the engine room. An autopsy performed by Dr Brian Beer concluded that the deceased was struck to the head by an object unknown causing 'a slightly curved, 20 millimetres in total length, there was partial thickness, it didn't go through to the skull'.<sup>25</sup> Having sustained this injury to his head, about which there appears to be no reasonable explanation that it could have been sustained accidentally,<sup>26</sup> Collado then came to fall over a railing from the 2<sup>nd</sup> level of the engine room to the 4<sup>th</sup> level of the engine room, a distance of 11.46 metres, to his death.<sup>27</sup> Police investigations were unable to determine how the injury to Collado's head occurred, except that it was as a result of some blunt force trauma, nor how he came to fall over the railing.<sup>28</sup>

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<sup>21</sup> Electronically Recorded Interview conducted between AFP and J Martinez on 7 September 2012

<sup>22</sup> Statement of Federal Agent Scott Raven, 5 January 2014, paragraphs 16 - 34

<sup>23</sup> Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 28 May 2015, page 4 - 14

<sup>24</sup> Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 28 May 2015, page 35

<sup>25</sup> Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 28 May 2015, page 48

<sup>26</sup> Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 28 May 2015, page 3

<sup>27</sup> Statement of DSC Hall, 23 August 2013, paragraph 6

<sup>28</sup> Statement of DSC Hall, 23 August 2013, paragraph 171



- 7.8. The observation of the investigating police after the death of the chief engineer was that the investigation was hampered and/or impeded by fears exhibited by the crew. Police experienced difficulties in obtaining information from each of the crew members. It was apparent to the investigating police that the crew were reluctant to assist police because they may have feared 'physical injury whilst on board the vessel or through concerns of their employment being terminated if they discussed problems on the vessel.'<sup>29</sup>
- 7.9. According to Counsel Assisting the Coronial Inquiry into the death of the chief engineer and the suspected death of the chief cook:

'It is very clear the crew members did not feel free to disclose everything they knew to the investigating police who conducted the interviews on board the vessel... One reason for their refusal to do that may have been because of the climate of either fear and or intimidation that existed on board the vessel.'<sup>30</sup>

The investigations suffered another setback when most of the crew flew back home two days later, leaving no witnesses and no suspects to examine.<sup>31</sup> Thereafter investigating police had enormous and ongoing difficulties locating and contacting the crew members.<sup>32</sup>

- 7.10. Having being flown to the ship to investigate the first death, the shipping companies' superintendent Kosaku Monji flew to Australia again for the second time to investigate the deaths and sailed with the ship back to Japan. However, on 6 October 2012, while the ship was unloading the cargo in Kodamatsu Port, Monji's body was found crushed inside the ship's conveyor belt machinery. Since the Japanese authorities were not informed about the previous 2 deaths, they concluded that his death was an accident.<sup>33</sup>
- 7.11. Three years later, because of the problems stated above, no person or organisation has yet been held responsible for these three violent deaths, in any jurisdiction.
- 7.12. The ongoing NSW Coronial Inquest into the *Sage Sagittarius* deaths has exposed a number of significant difficulties faced by Australian and international authorities in investigating serious incidents on FOC and international ships. It demonstrates how the current organisation of employment in the international shipping industry prevents Australian and other national agencies from properly carrying out their duties, and the limitations of current international shipping regulation and the Port State Control enforcement system in adequately protecting seafarers at work and in their home countries.

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<sup>29</sup> Statement of DSC Hall, 23 August 2013, paragraph 176

<sup>30</sup> Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 28 May 2015, page 6

<sup>31</sup> Crew Reports, Australian Customs Service Records, dated 2 September 2012 – 18 September 2012.

<sup>32</sup> Statement of Federal Agent Scott Raven, 5 January 2014, paragraph 149

<sup>33</sup> Japan Transport Safety Board, Ibidem

7.13. A serious related problem was the inability experienced by the NSW Coroner in attempting to best investigate into the circumstances and manner of the disappearance of Ceasar Llanto, the death of Hector Collado and in limited way, the circumstances of the death of Mr Monji. Jurisdictional difficulties lead to an inability to compel material witnesses from the Philippines and Japan. This was apparently experienced by the Coroner's team, the Australian Federal Police (AFP) and the ITF itself had real difficulties in their attempts to contact and deal with witnesses.<sup>34</sup>

7.14. In brief of evidence crew repeatedly stated they were scared for their lives. Full participation in the inquiry appeared to require the full protection ordinarily offered to vulnerable witnesses, yet neither the AFP nor the NSW Police have jurisdiction to protect the crew in the Philippines, or their families. One crew member says that following the first death, he was directly threatened by the captain, who said that: 'whenever I hiding in Philippines he can find me because he have contact in military and police here in the Philippines.' The crew member explained to the Inquest:

Q. You mean the chief engineer was telling you he had troubles sleeping ..is that right?

WITNESS: Yes, sir. He also speak to me like that also, sir.

Q. Did he ever tell you that he was worried about what might happen to him?

WITNESS: We, sir, all worry because we know as fear captain telling us that he have too much contact like that too much contact in police and military in the Philippines and all crew fear that one we scared if somebody giving

Q. Can you remember Mr Collado saying anything else at all about the disappearance of the chief cook?

WITNESS: No, sir, only I remember he cannot sleep like that same with captain because he speak to us during the meeting that just a small time sleeping. Some statement that not good for him maybe angry and he told us he told me also, sir, that whenever you hide in the Philippines I can find you - find me also thinking forwards.

Q. Who said that to you?

WITNESS: Captain Salas Venancio Salas told to me like that.

Q. When did he say that and where were you when he said it?

WITNESS: I forgot the date but during the - after maybe I think after lunch time we go to this deck galley deck then we cross ..(not transcribable).. then we talk like that

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<sup>34</sup> Statement of Federal Agent Scott Raven, 5 January 2014, paragraph 149

whenever I hiding in Philippines he can find me because he have contact in military and police here in the Philippines.

Q. Did he say that to you after Mr Llanto disappeared?

WITNESS: Yes, sir, yes, he did.

Q. On the same day or the day after or after that?

WITNESS: After the day Chief Cook Llanto disappeared he said to me like that.<sup>35</sup>

- 7.15. Crew statements were collected by the shipping company before the police investigation, after the suspected death of the chief cook. These statements were co-ordinated by the shipping company under the supervision of Mr Monji, the company superintendent who boarded the vessel and began taking statements from the crew prior to the Australian Federal Police. It is apparent that those statements have been co-ordinated to avoid discrepancies or inconsistencies.<sup>36</sup> The insistence by the company to iron out inconsistencies between the crew's accounts as to their whereabouts at the time of the disappearance of the chief cook appears to have been a factor which may have lead or be contributory toward the death of the chief engineer. This matter is a focus of the Coroner's Inquiry.<sup>37</sup>
- 7.16. A further problem was the strong reluctance by the witnesses that were contacted to speak out and come forward. The Coroner and her investigative team have evidently encountered very considerable difficulties, despite concerted efforts, in convincing the crew to speak up, two years after the incidents. Only 2 crew members and the Captain have been willing to appear as witnesses thus far.
- 7.17. Elsewhere in this Submission we have discussed the significant problems that employment on short-term contracts creates for crew, including the blacklisting of crew members when they seek their next employment contract (Paragraph 0). The *Sage Sagittarius* Inquiry shows that blacklisting can result not only from complaints made to employers, but also as a result of investigations made by Australian authorities.<sup>38</sup> If seafarers have a well-founded belief that cooperation with national authorities will lead to a loss of future employment, this significantly undermines the ability of those authorities to investigate incidents and prosecute violations.

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<sup>35</sup> Transcript of Proceedings into the Coronal Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 23 June 2015, page 34

<sup>36</sup> Transcript of Proceedings into the Coronal Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 29 May 2015, pages 54 and 66 - 67

<sup>37</sup> Transcript of Proceedings into the Coronal Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 28 May 2015, page 19, 29 May 2015, page 73

<sup>38</sup> Coronal Investigation: Suspected death of Cesar Plete Llanto, Police Statement, Scott Raven, 5/01/14, P. 8 and 9, 28, 29

- 7.18. A fair contention arising from the manner in which the captain of the *Sage Sagittarius*, his officers and crew dealt with the putative complaint by the messman was that the complaint potentially jeopardised the commercial interests of the shipping company by delaying the ship. The ITF contends that commercial interests were considered a priority during the whole period even though human lives were in danger.
- 7.19. Since the *Sage Sagittarius* carries a Panamanian flag, the Panama Maritime Authority was responsible for investigating the circumstances of the three deaths. This leads to a series of failings. First of all is the inability of the flag state nation to perform satisfactory investigations in waters well away from Panama. The Panamanian investigators did not interview the crew, the investigation was poor on many different levels, and the report into the deaths of Collado and Monji and the disappearance of Llanto was really minimalistic.<sup>39</sup> The investigation process allowed the shipowner to basically provide its own account of the deaths, which was not challenged or corroborated with other sources by the Panamanian authorities. It would be considered very poor practice for an Australian investigation to not interview the key witnesses to murder, like the crew, or to rely on only a single interested party's account of an incident. Such a lax investigatory process is another incentive for companies to use flags of convenience.
- 7.20. Extraordinarily, the Japanese authorities investigating the death of the superintendent appear not to have been informed about the two previous deaths. It appears that neither the Panamanian authorities nor the shipping company informed the Japanese police of the previous deaths on board. The Panamanian authorities not only performed a poor investigation of the first two deaths but also failed to inform the relevant national authorities when a third death happened in Japanese waters. As a consequence, the investigation of the Japanese Transport Safety Bureau was missing basic elements and concluded that the death of the superintendent was an accident.<sup>40</sup> Had the vessel been registered and flagged in Japan where the ship's owners were based, it would be reasonable to expect that the investigation in relation to the death of Monji would have been conducted in the knowledge of the earlier deaths on board.

- 7.21. The MLC provides as follows:

**'Regulation 5.1.6 – Marine casualties**

1. Each Member shall hold an official inquiry into any serious marine casualty, leading to injury or loss of life, that involves a ship that flies its flag. The final report of an inquiry shall normally be made public.

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<sup>39</sup> Panama Maritime Authority, Directorate General of Merchant Marine, Report: M/V "Sage Sagittarius" R-020-2013

<sup>40</sup> Japan Transport Safety Board, Marine Accident Investigation Report, September 27 2013

2. Members shall cooperate with each other to facilitate the investigation of serious marine casualties referred to in paragraph 1 of this Regulation.'

- 7.22. Clearly in the case of the *Sage Sagittarius* there was confusion and a miscommunication among the various Authorities. As of September 2015, we were not able to locate the report of the *Sage Sagittarius* investigation, or any other marine casualty investigation, or any annual report which might contain reference to the casualty investigation on the website of the Panama Maritime Authority and Panama Ship Register ([www.segumar.com](http://www.segumar.com)). A copy of the *Sage Sagittarius* investigation has become available through the NSW Coroners' Inquiry.
- 7.23. Guns and the sale of guns by the captain to the crew has also featured prominently in the Inquest.<sup>41</sup> To the extent that this activity was facilitated aboard a vessel with regular and ongoing connections to Australian ports is of very significant concern. It appears that all except the three deceased bought automatic handguns from the master.
- 7.24. The Inquiry has revealed a document prepared by the Australian Customs Service titled 'ACS Intercept System' (Figure 4). The document says it was printed on 5 September 2012, after the disappearance of the chief cook and before the death of the chief engineer. The document notes 'Alerts' against the names of several of the crew members and the captain of the vessel. These alerts are potentially significant. As yet, the Australian Customs Service has not revealed to the Coroner what these Alerts mean.

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<sup>41</sup> Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 29 May 2015, page 35, 38



7.25. Presently, the Port State Control record for the *Sage Sagittarius* as reflected in the IHS Fairplay commercial ship database contains no record of the three deaths on board (Figure 5 and Figure 6). This may have contributed to the Japanese investigators being unaware of the deaths on board the ship a few weeks earlier in Australia.

**Figure 5:** ‘Three year event summary’ including ‘Casualties’ for the *Sage Sagittarius*.

THREE YEAR EVENT SUMMARY			
Significant Event	Last 12 months	Between 1 and 2 years ago	2-3 years ago
Casualties	0	0	0
Class status changes	0	0	0
Detentions	0	0	0
DOC certificates	0	0	0
Flag changes	0	0	0
Group Owner changes	0	0	0
Inspections	3	3	1
Name changes	0	0	0

**Source:** IHS Fairplay Sea-web commercial database, accessed 10 September 2015.

**Figure 6:** Port State Control vessel safety inspection records for the *Sage Sagittarius*, showing no record of the three deaths on board between August 30 and October 6, 2012.

Fire safety - Fire fighting equipment and appliances (to be rectified before departure.)							
Other safety in general (Master instructed to, Stop unsafe working practice immediately and provide safe method before continuing.)							
Labour Conditions - Health protection, medical care, social security - Protection machines/parts (To be rectified within 14 days.)							
AMSA	Inspection	2014-11-13	Newcastle, NSW, AUSTRALIA	Sage Sagittarius	Panama		Hesperus Maritime Sa
Tokyo MOU	Inspection	2014-05-14	Tokuyama	Sage Sagittarius	Panama	Nippon Kaiji Kyokai	
AMSA	Inspection	2014-02-25	Newcastle, NSW, AUSTRALIA	Sage Sagittarius	Panama		Hesperus Maritime Sa
Tokyo MOU	Inspection	2013-09-12	Tokuyama	Sage Sagittarius	Panama	Nippon Kaiji Kyokai	
1 Defect:							
Lights, shapes, sound-signals							
Tokyo MOU	Inspection	2012-10-05	Tokuyama	Sage Sagittarius	Panama	Nippon Kaiji Kyokai	
AMSA	Inspection	2012-07-23	Newcastle, NSW, AUSTRALIA	Sage Sagittarius	Panama		Hesperus Maritime Sa
Tokyo MOU	Inspection	2012-05-09	Tokuyama	Sage Sagittarius	Panama	Nippon Kaiji Kyokai	
AMSA	Follow up	2011-07-18	Newcastle, NSW, AUSTRALIA	Sage Sagittarius	Panama	Nippon Kaiji Kyokai (NK)	Hesperus Maritime Sa
0 Defect:							
Safety of Navigation - Voyage or passage plan - Voyage plan made with withdrawn charts. (Rectify deficiency before departure, Rectify deficiency at next port, Deficiency rectified.)							
Safety of Navigation - Charts - Chart Aus 814 not updated/corrected. (Rectify deficiency before departure, Deficiency rectified.)							
Solas-Related Operational Deficiencies - Monitoring of voyage or passage plan - Voyage plan China-Newcastle used withdrawn charts. (Other, Deficiency rectified, From now on, to monitor.)							
Safety of Navigation - Nautical publications - Current cumulative list of Admiralty Notice to Mariners not on board. (Rectify deficiency at next port, Deficiency rectified.)							
Life Saving Appliances - Operational readiness of lifesaving appliances - M.O.B. lifebuoy (S) on bridge wing launching mechanism seized. (Rectify deficiency before departure, Deficiency rectified.)							
Life Saving Appliances - Lifeboats - Port L/Boat engine exhaust pipe disconnected. Exhaust discharging inside. (Rectify deficiency before departure, Deficiency rectified.)							
Solas-Related Operational Deficiencies - Dangerous goods or harmful substances in packaged form - Chemicals stored in steering gear room in containers with Japanese description labels. Crew working language is English. (Rectify deficiency at next port, Deficiency rectified.)							
Fire Safety Measures - Emergency fire pump - Em. fire p/p priming unit not working. (Rectify deficiency before departure, Deficiency rectified.)							
Solas-Related Operational Deficiencies - Operation of machinery - Crew unable to start em. generator on hydraulic starter. (Rectify deficiency before departure, Deficiency rectified.)							
Load Lines - Ventilators, air pipes, casings - Self-closing mechanism for W/ballast tanks #6 P/S in E/room not working. (Rectify deficiency before departure, Deficiency rectified.)							
AMSA	Inspection	2011-03-15	Newcastle, NSW, AUSTRALIA	Sage Sagittarius	Panama	Nippon Kaiji Kyokai (NK)	Hesperus Maritime Sa
10 Defects:							
Safety of Navigation - Voyage or passage plan - Voyage plan made with withdrawn charts. (Rectify deficiency before departure.)							
Safety of Navigation - Charts - Chart Aus 814 not updated/corrected. (Rectify deficiency before departure.)							
Solas-Related Operational Deficiencies - Monitoring of voyage or passage plan - Voyage plan China-Newcastle used withdrawn charts. (Other, From now on, to monitor.)							
Safety of Navigation - Nautical publications - Current cumulative list of Admiralty Notice to Mariners not on board. (Rectify deficiency at next port.)							
Life Saving Appliances - Operational readiness of lifesaving appliances - M.O.B. lifebuoy (S) on bridge wing launching mechanism seized. (Rectify deficiency before departure, Deficiency rectified.)							
Life Saving Appliances - Lifeboats - Port L/Boat engine exhaust pipe disconnected. Exhaust discharging inside. (Rectify deficiency before departure.)							
Solas-Related Operational Deficiencies - Dangerous goods or harmful substances in packaged form - Chemicals stored in steering gear room in containers with Japanese description labels. Crew working language is English. (Rectify deficiency at next port.)							
Fire Safety Measures - Emergency fire pump - Em. fire p/p priming unit not working. (Rectify deficiency before departure.)							
Solas-Related Operational Deficiencies - Operation of machinery - Crew unable to start em. generator on hydraulic starter. (Rectify deficiency before departure.)							
Load Lines - Ventilators, air pipes, casings - Self-closing mechanism for W/ballast tanks #6 P/S in E/room not working. (Rectify deficiency before departure.)							

**Source:** IHS Fairplay Sea-web commercial database, accessed 10 September 2015.

**Recommendation 4:** Australia should lobby at an international level for Port State Control detention, deficiency and casualty records to include all deaths and outcomes of investigations on board ships trading to and from each country.

**Recommendation 5:** The investigators of any maritime incidents should be aware that international crew may have good reason to feel that cooperation with Australian authorities could result in them being blacklisted or threats being made to themselves or their families. Seafarers should be given the option of giving evidence in confidence and disguising their identity. However, investigators must also be aware that the need to travel internationally in coordination with ship's schedules and forgo employment during this period may still prevent seafarers from being able to properly assist Australian authorities.

**Recommendation 6:** Full whistleblower protections including asylum in Australia should be offered for crewmembers and their families who are witnesses to critical maritime incidents which affect Australia's security, environment or safety.

**Recommendation 7:** As the precarious employment and vulnerability of seafarers, and the need to investigate maritime incidents, is common around the world, AMSA should investigate what steps are taken in other countries to protect witnesses and facilitate their cooperation with maritime authorities.

**Recommendation 8:** Australia should seek to have whistleblower protections for maritime investigations embedded into the Maritime Labour Convention.

**Recommendation 9:** AMSA should investigate what practical mechanisms are in place for Flag States to share information about investigations and annual reports relevant to Australia. A list of those Flag State investigations into incidents in Australian waters should be included in AMSA's annual Port State Control report on international shipping to Australia.

## **8. Australian Fuel Security**

8.1. The Inquiry into Australia's Transport Energy Resilience and Sustainability by the Senate Rural Affairs and Transport References Committee made the following recommendations in its June 2015 report that are relevant to this Inquiry:

- The committee recommends that the Australian Government undertake a comprehensive whole-of-government risk assessment of Australia's fuel supply, availability and vulnerability. The assessment should consider the vulnerabilities in Australia's fuel supply to possible disruptions resulting from military actions, acts of terrorism, natural disasters, industrial accidents and financial and other structural dislocation. Any other external or domestic circumstance that could interfere with Australia's fuel supply should also be considered.
- The committee recommends that the Australian Government develop and publish a comprehensive Transport Energy Plan directed to achieving a secure, affordable and



sustainable transport energy supply. The plan should be developed following a public consultation process. Where appropriate, the plan should set targets for the secure supply of Australia's transport energy.<sup>42</sup>

- 8.2. The recommended risk assessment and Transport Energy Plan should include the risk of the recent wholesale shift to relying on international and FOC petroleum tankers for Australia's fuel imports and domestic distribution. Only one Australian-crewed tanker remains in service as of September 2015.
- 8.3. In considering the consequences of the increasing reliance of Australia on FOC and international shipping, this Inquiry should be aware of the potential threats to Australian fuel security outlined by various organisations in paragraphs 4.5 to 4.17 and 4.47 to 4.49 of the Report into Australia's Transport Energy Resilience and Sustainability.
- 8.4. In November 2014, there were 5 Australian-crewed and managed fuel tankers operating domestically which were scrupulously maintained with an excellent safety record. Each had the capacity to carry about 40,000 tonnes of refined petroleum, plus the ships' bunkers required for operational purposes. Over a combined 36 years of service and 95 Port State Control inspections (Table 2), these 5 tankers *were never* detained by the Australian Maritime Safety Authority's (AMSA) Port State Control safety inspections. Australian crews are long-serving seafarers that are multi-skilled with the highest attention to detail and standards of ship maintenance.

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<sup>42</sup> Senate Rural Affairs and Transport References Committee, Inquiry into Australia's Transport Energy Resilience and Sustainability, June 2015.

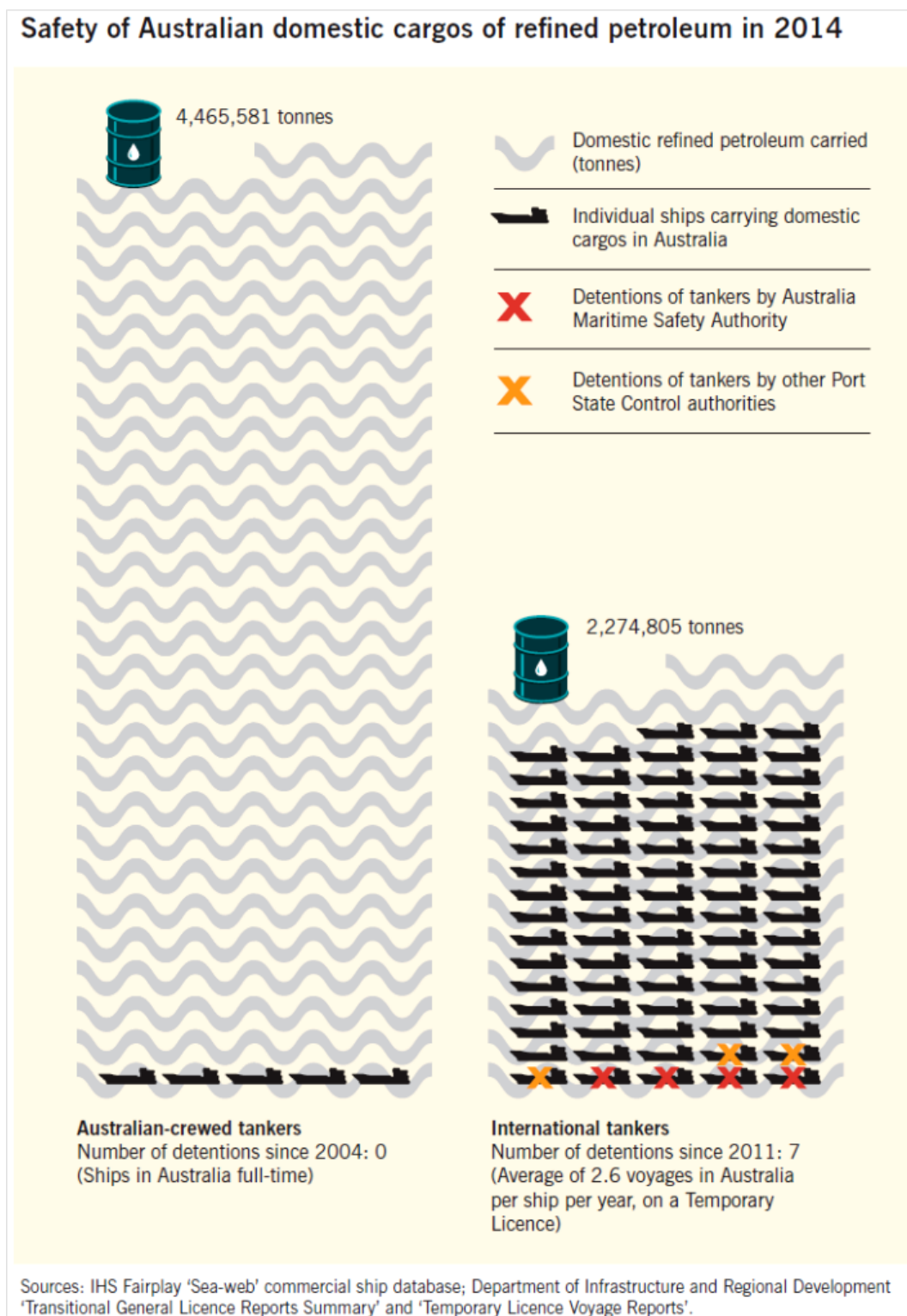
**Table 2:** Australian-crewed petroleum tankers on long term contracts to Australian oil companies in November 2014.

	Operating since	Flag	Crew	Port State Control inspections	Detentions
<b>British Loyalty</b>	2004	Isle of Man (long term charter in Australia)	Australian	32	<b>0</b>
<b>British Fidelity</b>	2004	Isle of Man (long term charter in Australia)	Australian	22	<b>0</b>
<b>Hugli Spirit</b>	2005	Bahamas (long term charter in Australia)	Australian	15	<b>0</b>
<b>Alexander Spirit</b>	2007	Bahamas (long term charter in Australia)	Australian	14	<b>0</b>
<b>Tandara Spirit</b>	2008	Marshall I (long term charter in Australia)	Australian	12	<b>0</b>
<b>Total</b>				<b>95</b>	<b>0</b>

**Source:** IHS Fairplay 'Sea-web' commercial ship database, listing for each ship.

- 8.5. In late 2014 and early 2015, Viva Energy, British Petroleum, and Caltex removed the Australian crews from the *British Loyalty*, the *Hugli Spirit*, the *Alexander Spirit* and the *Tandara Spirit*, replaced them with international crew, and moved the ships to international or combined domestic/international trade. The *British Fidelity* is the only Australian-crewed and managed tanker still in operation.
- 8.6. The ITF has undertaken a detailed survey of the safety records of the international ships that carried domestic petroleum cargos in 2014. In 2014, international ships carrying cargo on a Temporary Licence carried 2.3 million tonnes of refined petroleum between Australian ports. This amount of refined petroleum could be carried by 2 or 3 dedicated domestic fuel tankers.
- 8.7. However, instead of being carried on 2 or 3 dedicated domestic ships, the 2.3 million tonnes of domestic refined petroleum cargos (and the associated bunker fuel) was carried on 78 separate international ships. Each ship made an average of 2.6 domestic voyages in Australia in 2014, and spent the rest of their year carrying international cargos. The names and detailed records for each of these ships are given in Annex D. The contrast between the number of ships and the volumes carried is illustrated in Figure 7.

**Figure 7:** Volumes and safety of domestic petroleum carried by Australian and international ships in 2014.



- 8.8. In contrast to the safety record of the Australian-crewed and managed ships, almost 10% of the international petroleum tankers used for domestic cargos in 2014 had been detained in the previous 3 years (7 ships). Five of the ships were detained in 2014 or 2015. Four of the

ships were detained in Australia by AMSA, the other three were detained in other countries. Details of the detentions are outlined in Table 4.

- 8.9. Of the seven ships that had been detained, *Golden Top* and *Stolt Rindo* are owned in Japan, managed in Korea and flagged in Panama. *Stolt Rindo* is also operated by a company in Singapore. *Ocean World* and *DL Cosmos* are South Korean flagged and owned ships. *Petrolimex* is a Vietnamese ship. *Stavanger Eagle* is Norwegian owned and flagged, and German managed. *Vinalines Galaxy* is Vietnamese owned and flagged, and managed in Singapore. All were international crewed.
- 8.10. Not only are there much higher numbers of detentions of international tankers carrying domestic petroleum cargos than their Australian crewed and managed equivalents, an average of 12 tankers per year carrying international imports to Australia have been detained by AMSA (Table 3).

**Table 3:** AMSA Port State Control detentions of international-flag tankers in Australian ports.

	Detentions of international-flag tankers per year
2004	8
2005	11
2006	7
2007	16
2008	14
2009	13
2010	11
2011	17
2012	12
2013	13
<b>TOTAL</b>	<b>122</b>
<b>AVERAGE PER YEAR</b>	<b>12.2</b>

**Source:** Australian Maritime Safety Authority, *Port State Control Report 2004-2013*. Table 9 in each annual report. 'Tankers' includes 'chemical tankers', 'oil tankers', 'Noxious Liquid Substance tankers', and 'Tankers not otherwise specified'. All of these types of tankers are engaged in carrying refined petroleum products.

**Table 4:** Recent detention records for petroleum tankers carrying domestic petroleum cargos in 2014.

Ship	Ownership and management	Detentions	Maritime authority and where detained
<i>Golden Top</i>	Owned in Japan, managed in Korea and flagged in Panama	<i>19 February 2015:</i> <b>1 day detention,</b> fire safety (previous detention for 3 days in Suez in 2008)	AMSA: Brisbane, QLD
<i>Stolt Rindo</i>	Owned in Japan, managed in Korea and flagged in Panama, operated by a company in Singapore.	<i>27 May 2013</i> <b>1 day detention</b> 3 defects: lifesaving appliances - operational readiness of lifesaving appliances; fire safety - fire-dampers; working and living conditions - living conditions - water pipes, tanks); <i>9 December 2011</i> <b>1 day detention</b> 4 defects: Radio Communications - reserve source of energy - GMDSS Radio Installation reserve power batteries defective; Ships Certificates and Documents' - Document of Compliance DoC/ ISM Code - Annual endorsement of ISM DOC not found on board; Food and catering (ILO 147) - Galley Handling rooms - Galley drain gutter tiles many cracked; Radio Communications - other (radio) - MF/HF Radio antenna shackle ring for insulator worn); (2/5/08 - 0 Day Detention - 2 Defects: defective lifeboat release mechanisms: port lifeboat safety cam (aft) not in correct position; hook correct locking condition arrowpoints not apparent/ in accord with mechanism drawings (both boats); SOLAS training manual does not include ship specific instructions for lifeboat release mechanisms).	AMSA: Townsville, QLD  AMSA: Kwinana, WA
<i>DL Cosmos</i>	South Korean flagged and owned ships.	<i>1 May 2014:</i> <b>2 day detention:</b> ISM - Shipboard operations; Labour conditions - accommodation, recreational facilities, food and catering - training and qualification of ship's cook; labour conditions - conditions of employment - calculation and payment of wages - labour conditions - accommodatoin, recreational facilities, food and catering - other; labour conditions - conditions of employment - other; labour conditions - conditions of employment - other);	AMSA: Melbourne, VIC

Ship	Ownership and management	Detentions	Maritime authority and where detained
<i>Ocean World</i>	South Korean flagged and owned ships.	<p><i>2 April 2015</i></p> <p><b>1-day detention:</b></p> <p>14 defects: Labour conditions- conditions of employment - others; labour conditions - conditions of employment - other; Safety of Navigation - Voyage of passage plan; Alarms - other; fire safety - remote means of control; fire safety - other; labour conditions - health protection, medical care, social security - guards - fencing around dangerous machinery parts; Fire safety - jacketed high pressure lines and oil leakage alarm; fire safety - fixed fire extinguishing installation; pollution prevention - MARPOL Annex 1 - 15 PPM Alarm arrangements; ISM - shipboard operations.</p> <p><i>29 July 2014:</i></p> <p><b>Detention – 1 day</b></p> <p>8 Defects: Radio communication - Facilities for reception of marine safety inform. Life saving appliances - Lifeboats Fire safety - Fire-dampers Propulsion and auxiliary machinery - Gauges,thermometers, etc Fire safety - Other Pollution Prevention - MARPOL Annex I - Oil disch. Monitoring and control system Pollution Prevention - MARPOL Annex IV - Sewage treatment plant ISM - Maintenance of the ship and equipment</p>	AMSA: Brisbane, QLD (both cases)
<i>Petrolimex 16</i>	Vietnamese ship.	<p><i>26 May 2015</i></p> <p><b>1 day detention</b></p> <p>5 defects: fire fighting equipment and appliances; emergency cleaning devices, charts, volatile organic compounds in tankers, shipboard operations</p>	Gwangyang, Korea
<i>Stavanger Eagle</i>	Norwegian owned and flagged, and German managed.	<p><i>2 October 2014</i></p> <p><b>1 day detention</b></p> <p>7 Defects: schedules for watching personnel, oil record book, emergency fire pump and its pipes, propulsion main engine, other, company responsibility and authority, maintenance of the ship and equipment</p>	Vostochny, Russia

Ship	Ownership and management	Detentions	Maritime authority and where detained
<i>Vinalines Galaxy</i>	Vietnamese owned and flagged	<p><i>10 October 2011</i></p> <p><b>1 day detention</b></p> <p>41 defects: International Oil Pollution Prevention (IOPP); Freeboard marks; Freeboard marks; Lights, shapes, sound-signals; Other (MARPOL Annex I); Maintenance of the ship and equipment; Tonnage certificate; Other (STCW); SOPEP; Steering gear; Fixed fire extinguishing installation; Charts; Other (navigation); Inflatable liferafts; Launching arrangements for survival craft; Launching arrangements for survival craft; Other safety in general; Other safety in general; Electrical installations in general; Electrical installations in general; MF/HF Radio installation; Lifejackets incl.provision and disposition; Other (machinery); Other (machinery); Other (machinery); Retention of oil on board; Cargo Ship Safety Construction (including exempt.); Minimum Safe Manning; Document; Engine International Air Pollution Prev. Cert.; Endorsement by flagstate; Oil record book; Hull - corrosion; Other (accident prevention); Other (navigation); Other (navigation); Other (navigation); Other (navigation); Other (navigation); Other (navigation); Inflatable liferafts Oil filtering equipment);</p>	Nakhodka oil port, Russia

**Recommendation 10:** That the Australian Government amend the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and or the *Liquid Fuel Emergency Act 1984* to require a level of “Australian connection or content” in the transportation components of critical economic imports, particularly energy such as refined petroleum products, but others such as high consequence cargos (e.g. ammonium nitrate), high security cargos (e.g. weapons, munitions, explosives) and dangerous cargos (e.g. Aviation gas, other liquid and gas fuel) as well as high value exports, such as LNG.

## 9. Marine Environment

- 9.1. It is well known that Australia is exceedingly vulnerable to marine pollution.<sup>43</sup> Under the *United Nations Convention on the law of the sea, 1982 (UNCLOS)*, Australia has the rights and responsibilities over an approximate 16 million square kilometres of water, including the Exclusive Economic Zone (EEZ).<sup>44</sup> That is more than double that of Australia’s land mass, making Australia’s oceans the third largest and the most diverse on the planet. Australia’s oceans are also home to many underwater seascapes and provide a sanctuary for numerous bio-diverse marine species including 6 out of 7 known species of marine turtles, 45 of the world’s 78 whale and dolphin species and 4,000 fish species.<sup>45</sup>
- 9.2. According to UNCLOS, marine pollution is defined as the “introduction by man, directly, or indirectly, of substances or energy into the marine environment...which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, ... impairment of quality for use of sea water and reduction of amenities.”<sup>46</sup>
- 9.3. The rapid increase in global trade combined with a series of major maritime incidents involving multiple jurisdictions and nationalities of shipowner, manager, crew, and geographical location has motivated the drafting of numerous international treaties, conventions and Commonwealth legislation in order to protect and preserve the environment.<sup>47</sup> Australia is a signatory to 19 international conventions<sup>48</sup> for the protection of the marine environment in which the United Nations (UN) and International Maritime

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<sup>43</sup> See Report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame – inquiry into ship safety*, December 1992.

<sup>44</sup> M White, *Australasian Marine Pollution Laws*, Federation Press, 2<sup>nd</sup> ed., 2007.

<sup>45</sup> Australian Marine Conservation Society, *Marine Parks – Australia’s oceans are special and worthy of protection*, 2015.

<sup>46</sup> See the United Nations Convention on the law of the sea, 1982. Article 1(4).

<sup>47</sup> For example, see the Torrey Canyon grounding in 1967 which gave rise to the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC 1969)

<sup>48</sup> Refer to White, M., *Australian Maritime Law*, 2014, p. 597 for more information



Organisation (IMO) are responsible for founding. From these, 12 Commonwealth laws<sup>49</sup> give effect to the conventions through the passing of acts in Parliament and through the Australian Maritime Safety Authority (AMSA) who enforce them through Port State Control (PSC).

9.4. These Conventions and Acts are outlined in Annex B.

9.5. **Enforcement of Marine Environmental protection acts and conventions**

9.6. In Australia, the responsibility for most marine environmental legislation falls on the Commonwealth Department of Transport and Regional Services and the implementation and enforcement of these laws is the responsibility of AMSA. AMSA and the Minister of this Department also represents the government of Australia at the IMO and in the making of the various international IMO treaties.

9.7. AMSA is responsible for preventing pollution of the marine environment and responding quickly and efficiently to maritime casualties and marine pollution incidents that occur from shipping, offshore production or any other source.<sup>50</sup>

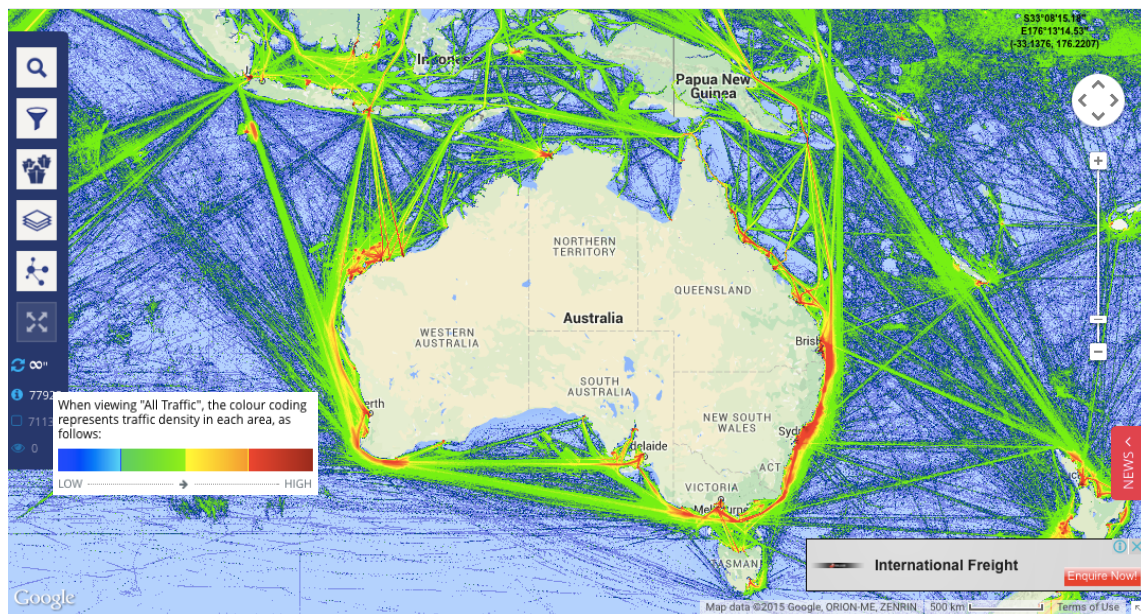
9.8. The total arrivals of international ships into Australian ports has increased 53% since 2002, with 26,936 individual port calls in 2014 (paragraph 4.1 of this Submission). Despite improvements in ship design and AMSA's best efforts to inspect ships, the result is an increase in the sources of operational pollution, such as the release of biocides from toxic chemicals used in anti-fouling paints of all ships, dumping of wastes including oily wastes, and the transfer of invasive alien species through ballast water. Increasing ship traffic also increases the risk of maritime accidents including oil spills. Areas at greatest risk are highlighted in Figure 8.

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<sup>49</sup> *ibid*, p. 609

<sup>50</sup> See AMSA website <[amsa.gov.au](http://amsa.gov.au)>

**Figure 8:** Australian shipping density for 2014.



**Source:** Marine Traffic, 2014.

- 9.9. AMSA Port State Control inspectors found 40 detainable deficiencies directly relating to pollution prevention in 2014. A total of 385 detainable deficiencies were found on 269 international ships in 2014, and many of these were for problems which could result in incidents with a significant environmental impact (for example: hours of rest, fire safety, safety of navigation, dangerous goods, structural conditions, alarms).<sup>51</sup>
- 9.10. Detainable deficiencies mean that AMSA judges that the problem is severe enough to hold the ship in port until the problem is fixed, despite the considerable cost and inconvenience to the shipowner (a detention). It is a higher grade of problem than ordinary ‘deficiencies’. Detentions are made:
- “To ensure that the ship will not sail until it can proceed to sea without presenting a danger to the ship or persons on board, or without presenting an unreasonable threat of harm to the marine environment whether or not such action will affect the scheduled departure of the ship.”<sup>52</sup>
- 9.11. In 2014, AMSA found reason to detain an international ship on average every 32 hours.
- 9.12. While there is significant regulation of international shipping through Port State Control and international treaties, the FOC system and the organisation of employment on FOC and other international ships does have significant gaps.

<sup>51</sup> AMSA, Port State Control 2014 Report, p. 20.

<sup>52</sup> AMSA, Port State Control 2014 Report, p. 19.

- 9.13. First, ships are not inspected when they first arrive in the Australian EEZ, but only after they have transited a significant portion of Australian waters and coastline to arrive in an Australian port.
- 9.14. Second, each international ship only spends a very short period of time in Australia, making an average of 4.7 port calls in Australia per year, a number that is declining (See Section 4 of this Submission). This means that AMSA must inspect a growing number of ships visiting Australia with a smaller time window in which they are actually in the country.
- 9.15. Third, AMSA only inspected 57% of international ships visiting Australia in 2014. AMSA use a ranking system to assess the risk posed by a ship. Although this system gives a good indication of where problems may lie, it is impossible to precisely predict every problem that a ship may pose.
- 9.16. Fourth, the employment relationships on FOC and international ships provide a strong disincentive for crew to come forward to as witnesses or to provide information to AMSA. International crew must be prepared to make immense personal sacrifices to cooperate with AMSA and Commonwealth prosecutions as doing so may pose a risk not only to their future employment, but even to the safety of themselves and their family.
- 9.17. The FOC system has direct environmental consequences as registering a ship in a different Flag State can create an effective cover for ship owners who do not wish to be prosecuted or identified in the wake of a marine pollution incident.<sup>53</sup>
- 9.18. **Operational pollution: Dumping of oily wastes and the use of ‘magic pipes’**
- 9.19. According to AMSA, the most common type of oil spill investigated by Australian regulatory agencies is the “intentional and illegal discharge of bunker fuel oil and waste oils at sea.”<sup>54</sup> Statistics released by AMSA in Annual Port State Control Reports depict there is an increasing portion of “mystery fuel oil spills” in which the source of the pollution is unknown.<sup>55</sup> This is not only problematic for the enforcement of MARPOL but also in the recovery of clean up costs and environmental remediation.
- 9.20. These so called “mystery fuel oil spills” are often due to the illegal installation of “magic pipes.” Magic pipes dispose of the water, oil and other pollutants produced by the engine and other machinery in the course of regular operation and maintenance directly into the sea, bypassing the Oily Water Separator. This oily water mix is supposed to be stored in holding tanks in the vessel until the crew can dispose of it properly. However, there are

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<sup>53</sup> T Shaughnessy & E Tobin, *Flags of Inconvenience: Freedom and Insecurity on the High Seas*, p. 20

<sup>54</sup> AMSA, *Bunker and Fuel Weathering and Fingerprinting*, <amsa.gov.au>

<sup>55</sup> AMSA Port State Control Annual Reports

exceedingly strict rules in Australia (in accordance to *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*) on how much waste can be released, transported, where and under what conditions it can be unloaded. Fees for disposal are also commonplace. The Organisation for Economic Cooperation and Development estimated that an average annual cost of meeting MARPOL regulations could be in excess of \$USD 30,000 for an average cargo ship to \$USD 150,000 per year for a large tanker.<sup>56</sup> These costs represent between 3.5-6.5% of a ship's overall operating expenses.<sup>57</sup>

- 9.21. According to AMSA, MARPOL deficiencies account for approximately 4% of all detentions. The main item detained for was found to be the inoperable use of Oily Water Separators (OWS). Examples of this include the detention of Hong Kong flag ship, *Coral Chief*<sup>58</sup> in 2014 and the Marshall Island flag bulk carrier, *Braveheart*<sup>59</sup> in 2013. The use of an OWS gives evidence to AMSA inspectors that MARPOL and Australian regulations have been met.<sup>60</sup>
- 9.22. An OWS is not prohibitively expensive for many vessels to have however, the maintenance, repair, cleaning and crew training add to the costs for a vessel owner employing an oily water separator. Furthermore, the operation of an oily water separator generally requires at least one crewmember during an 8-hour watch, and more crewmembers for the maintenance of the oily water separator.
- 9.23. There is therefore significant financial incentive for vessels to bypass the oily water separator as to pump their oily water directly overboard using a "magic pipe".<sup>61</sup> The use of a magic pipe is also normally accompanied by the falsification of the MARPOL-required oil record book.<sup>62</sup>

**Recommendation 11:** The Protection of the Sea Levy paid by ships to AMSA should fund free oily water collection facilities throughout Australian ports in order to reduce the incentive for illegal dumping of oily wastes.

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<sup>56</sup> OECD. Cost savings stemming from non-compliance with international environmental regulations in the maritime sector. *Maritime Transport Committee. Organisation for Economic Co-operation and Development*, 2003, p. 5.

<sup>57</sup> Ibid., p. 5.

<sup>58</sup> AMSA Ship Detention List – May 2014

<sup>59</sup> AMSA Ships Detention List – May 2013

<sup>60</sup> AMSA, op. cit., <amsa.gov.au>

<sup>61</sup> B Abel, Reviewing the Magic Pipes: Angelex Ltd. V. United States. *William & Mary Bill of Rights Journal*, 2015, p. 863-864.

<sup>62</sup> A Homer, Comment, Red Sky at Morning: The horizon for corporations, Crew Members and Corporate Officers as the US Continues Aggressive Criminal Prosecution of International Pollution from Ships, *Tul. Mar.L. J.*, 2007, p. 151.

#### 9.24. Operational pollution: Dumping of rubbish

- 9.25. Marine Debris is defined as “any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment.”<sup>63</sup> Marine debris is exceedingly harmful to marine life, through the entanglement and ingestion of such wastes as nettings, plastic bottles, packaging materials, cigarette butts, etc.<sup>64</sup>
- 9.26. Under the Commonwealth *Protection of the Sea (Prevention of Pollution of Ships) Act 1983*, and the various state and territory legislation, Australian marine regulatory agencies are able to prosecute ship owners and ship-masters in response to the illegal dumping of garbage.
- 9.27. In November 2014, *Xin Tai Hai*, a Panama flag of convenience bulk carrier was prosecuted and fined \$AUD 20,000 for dumping “various large plastic bags” containing plastics, garbage and food wastes.<sup>65</sup>
- 9.28. Further, in May 2015, the owners of *Asteria Leader*, a Japanese flagged vehicle carrier, and the *CSCL Brisbane*, a Hong Kong flagged container carrier, were both prosecuted and fined for dumping garbage and waste, \$AUD5000 and \$AUD6000 respectively.<sup>66</sup>
- 9.29. More recently, in July 2015, the owner of the *ANL Kardinia* a Hong Kong flagged container carrier was prosecuted and fined \$4000 for the illegal dumping of garbage and food waste.<sup>67</sup>
- 9.30. According to AMSA, no Australian flagged vessel has been prosecuted for ship sourced garbage pollution since 1997.<sup>68</sup>

**Recommendation 12:** The Protection of the Sea Levy paid by ships to AMSA should fund free garbage collection throughout Australian ports in order to reduce the incentive for illegal dumping of rubbish.

**Recommendation 13:** The penalty for illegally dumping rubbish should be greatly increased to act as a deterrent and more effort should go into identify the source of garbage dumped and fines should include the cost of cleanup and identification.

#### 9.31. Operational pollution: Ballast water

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<sup>63</sup> United Nations, *Environment Program*, 2009.

<sup>64</sup> Department of the Environment, *Marine Debris*, <environment.gov.au>

<sup>65</sup> AMSA, *Prosecutions for ships sourced garbage pollution, Commonwealth and State Legislation from 1997*, 2015. <https://www.amsa.gov.au/environment/legislation-and-prevention/prosecutions/garbage/table.asp>

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

- 9.32. As defined by the National Research Council, ballast water is “any solid or liquid carried by a ship to increase the draft, change the trim, regulate stability or maintain the stress loads within acceptable limits.”<sup>69</sup> The use of ballast water on ships is a vital safety component. However, it has been estimated that 7 billion tonnes of ballast water (and associated biota) is transferred annually by merchant shipping around the world.<sup>70</sup> Of that, approximately 150 million tonnes of ballast water is discharged in Australian waters from overseas vessels.<sup>71</sup>
- 9.33. Ships are considered primary pathways for unintentional introduction of non-indigenous species (NIS) into new environments and this is recognised as a significant worldwide problem.<sup>72</sup> The total number of NIS introduced into Australian waters is unknown, however in 2004, CSIRO Marine Research identified 129 non-native and 214 cryptogenic species in Australia.<sup>73</sup>
- 9.34. There are gaps in the current knowledge of marine pests and therefore it is unclear whether the current legislation under the *Biosecurity Act 2015* (not in effect until 2016) and the ballast water requirements (established in 2001) are effective. Further research is required to fully understand the impact of NIS and the effectiveness of ballast water regulation in Australia.
- 9.35. At present, the IMO Ballast Water Convention 2004 has not yet been ratified as there needs to be at least 35% of the maritime industry to be signatory to it and it is still at 32.5%. Only 7 of the 23 flag of convenience states identified by the ITF have signed the convention.<sup>74</sup> Australia is a signatory state.
- 9.36. There are few reliable cost estimates of impacts of invasive marine species in Australia however, the eradication of black striped mussel from three marinas in Darwin cost in excess of \$2.2 million.<sup>75</sup> However, international regulatory uniformity will be the only productive way in which to eliminate the introduction of NIS in Australian waters.

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<sup>69</sup> NRC [National Research Council]. 1996. *Stemming the tide: controlling introductions of nonindigenous species by ships' ballast water*. National Academy Press, Washington, D.C.

<sup>70</sup> O Endreson, H L Behrens, S Brynstad, A B Andersen & R Skjong, 'Challenges in global ballast water management,' *Marine Pollution Bulletin*, vol. 48, 2004, p. 615-623; Wartsila, 'Ballast Water Management Systems Q&A Booklet.' <<http://www.wartsila.com/static/studio/assets/content/ss4/ballast-qa-booklet.pdf>>

<sup>71</sup> AMSA

<sup>72</sup> AMSA; K R Hayes & C Silwa, 'Identifying potential marine pests- a deductive approach applied to Australia.' *Marine Pollution Bulletin*, vol. 46, 2003, p. 91-98; S L Williams, C J Zabin, et al., 'Managing Multiple Vectors for Marine Invasions in an Increasingly Connected World.' *Bioscience*, vol. 63, 2013, p. 952-966.

<sup>73</sup> K Hayes, C Silwa, S Migus, F McEnulty, P Dunstan, *National priority pests. Part II. Ranking of Australian marine pests*. Independent report for Department of Environment and Heritage, Australian Government Department of Environment and Heritage, Canberra, Australia, 2005.

<sup>74</sup> ABS, 'Ballast Water Treatment Advisory,' 2014, p. 2.

<sup>75</sup> AMSA Position Paper on Marine Pests, 2007.

### 9.37. Operational pollution: Anti-fouling paint

- 9.38. The use of anti-fouling biocide on the underwater portion of ships hulls that contains the toxic compound Tributyltin (TBT) has been banned from use as of September 2008 in Australia.<sup>76</sup> While effective for its intended use, TBT had been found to cause a wide ranging and deleterious effects on aquatic biota where it bio-accumulates quickly, enters food webs and biomagnifies as it is incorporated into marine food webs.<sup>77</sup> While Australia has ratified this convention and introduced domestic legislation to enforce it, many countries have not or do not enforce such regulations, leaving TBT as a continuous problem for some time to come.<sup>78</sup>
- 9.39. Evidence from the 2009 GBRMPA report shows that highly elevated concentrations of anti-fouling paint particles to the Great Barrier Reef (GBR) have been closely associated with ships' groundings.<sup>79</sup>
- 9.40. Over 600 shipping related incidents (e.g mechanical failures which have, or could have, resulted in ship groundings or pollution) have been recorded in the GBR region since 1987.<sup>80</sup> Examples of these include the 1999 grounding of *New Reach*<sup>81</sup> at Heath Reef, the 2000 grounding of *Bunga Teratai Satu*<sup>82</sup> at Sudbury Reef, the *Doric Chariot*<sup>83</sup> grounding south of the Piper Reef and the 2010 grounding of the *Shen Neng 1* off the Douglas Shoal. Concentrations of TBT measured at the Sudbury Reef, Douglas Shoal and detected at the Heath Reef grounding sites were elevated above the Australian Anti-Fouling and In-Water Cleaning Guidelines, 2013.<sup>84</sup>
- 9.41. Moreover, numerous near miss shipping incidents go unreported. A recent survey of pilots in the GBR found that 'The number of [shipping related incidents] which they claimed to have

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<sup>76</sup> The relevant Conventions and Acts are: the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001; Protection of the Sea (Harmful Anti-Fouling Systems) Act, 2006.

<sup>77</sup> A Roach & S Wilson, 'Ecological impacts of tributyltin on estuarine communities in the Hastings River, NSW, AUS,' *Marine Pollution Bulletin*, vol. 58, 2009, p. 1780-1786.

<sup>78</sup> As of 2010, 47 parties were signatory to the convention, representing 74.4% of the world's gross tonnage. See CEP/UNEP, 'Report of the Regional Workshop on the Anti-Fouling Systems Convention,' 2010, p. 5.

<sup>79</sup> Great Barrier Reef Marine Park Authority [GBRMPA] Report, 2009

<sup>80</sup> Ibid.

<sup>81</sup> 16 May 1999, *New Reach*, Panama flagged ship, ran aground on Heath Reef. ATSB report, 147

<sup>82</sup> 2 November 2000, *Bunga Teratai Satu*, Malaysian flagged ship ran aground on the Sadbury Reef, Torres Strait. ATSB report, 162.

<sup>83</sup> 26 July 2002, *Doric Chariot*, Greek registered ship, ran aground south of Piper Reef affecting 1500 square metres of coral with anti-fouling paint. ATSB found grounding due to pilot's significant fatigue. ATSB, report 182.

<sup>84</sup> Department of Sustainability, Environment, Water, Population and Communities, 'Anti-Fouling and In-Water Cleaning Guidelines,' June 2013, *Department of Agriculture, Fisheries and Forestry, Australian Government*.

experienced was about 10 times the number of reports of such events in records held by AMSA.”<sup>85</sup>

9.42. According to De’ath et al., reefs in the GBR have lost almost 50% of coral cover since the mid 1980s.<sup>86</sup> Every step must be taken to protect the remaining coral. Unfortunately, despite the advent of compulsory pilotage in 2001 and the Great Barrier Reef and Torres Strait Vessel Traffic Service (REEFVTS), severe accidents still occur (See *Shen Neng 1*, paragraph 9.61 of this Submission) and worse still, the recovery of reefs from ship groundings is often very slow and in many cases, can take decades.<sup>87</sup>

9.43. **Major incidents: Bunker oil spills**

9.44. One of the worst examples of marine pollution occurs when bunker fuel or crude oil is spilled in quantity, devastating living organisms in the sea and along the coast. Heavy or crude oil and petroleum products are known for their volatile carcinogenic nature. They can damage to red blood cells, suppress the immune system, strain the spleen, cause pneumonia and interfere with the reproductive systems of humans and animals.<sup>88</sup>

9.45. Bunker oil, as defined by the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 is “any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.”<sup>89</sup> Virtually all of the 5,674 international ships that visited Australia in 2014 carried bunker oil for their engines and other machinery.

9.46. Marine pollution caused by bunker oil spills are exceedingly detrimental as it is more persistent than refined petroleum and therefore, more likely to have a more harmful impact on the marine environment and marine wildlife. Initially, only spill from tankers carrying petroleum as cargo were covered by the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992 or the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (FUND) 1992. The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 was introduced as a result of this gap.

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<sup>85</sup> ATSB, Safety Issue Investigation into Queensland Coastal Pilotage, 2012.

<sup>86</sup> G De’ath, K Fabricius, H Sweatman & M Putotirrn. Shifting base lines declining coral cover and the erosion of reef resilience: comment on Sweatman et al. 2011, *Coral Reefs*, 30, 2012, p. 653-660.

<sup>87</sup> Precht, W.F. 1998 The art and science of reef restoration. *Geotimes* 1, 16-20

<sup>88</sup> AMSA, The effects of Maritime oil spills on Wildlife including non-avian Marine life.

<sup>89</sup> See Bunker Convention 2001, Art. 1(5).



- 9.47. Pollution from bunkers is usually the result of grounding and can have a significant impact on the environment. Examples include the *Korean Star*,<sup>90</sup> *Nella Dan*,<sup>91</sup> *Anro Asia*,<sup>92</sup> *the Sanko Harvest*,<sup>93</sup> and the *Pacific Adventurer*.
- 9.48. Under the Bunker Convention, the shipowner bears liability for pollution damage caused in the state party's territory and for the preventative measures taken in relation to the spill. The upper limit of the liability is based on the limits established under the IMO Convention on Limitation of Liability for Maritime Claims (LLMC) 1976. This was problematic in that the upper limit of liability is inadequate to cover reasonable cost recovery and compensation for bunker oil spills.
- 9.49. After the bunker spill from the Hong Kong flag container ship, *Pacific Adventurer*, Australia and other states such as the UK argued that the limitation on liability should be increased by 147%. Eventually, it was agreed that the upper limit of the LLMC convention should be increased by 51%, which came into effect in June 2015. This remains an inadequate upper limit.<sup>94</sup>
- 9.50. The *Pacific Adventurer* lost overboard 31 containers holding ammonium nitrate<sup>95</sup> off Cape Moreton, Queensland. The containers punctured the ship's bunker tank. Approximately 270 tonnes of bunker oil leaked from the tanks, affecting 38 miles of Queensland's coastline near Brisbane (Figure 9).
- 9.51. At the time of the incident, March 2009, the liability limit for this incident (per the size of the ship) was approximately AUD \$17.5 million. However, the initial estimate of the clean up costs made by the Queensland Government was over AUD \$30 million. This is an example of the gross inadequacy of the upper limit of the Convention, which the Australian government would have had to pay for. However, owners Swire Shipping were required to pay AUD \$17 million and agreed to provide an extra AUD \$9 million in compensation for the oil spill to a court-administered fund and a trust established to help improve marine protection and marine safety. It has been suggested by the Ince & Co. law firm that the owners are part of an industrial group who has business interests in Australia and therefore, there might have been political pressures exerted on them in making this decision.<sup>96</sup>

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<sup>90</sup> MV *Korean Star*, Panamanian flag of convenience bulk carrier that was wrecked on 20 May 1988 near Cape Cuvier, Western Australia.

<sup>91</sup> MV *Nella Dan* grounded at Macquarie Island on 3 December 1987.

<sup>92</sup> *Anro Asia*, Singapore flagged ship, grounded in Bribie Island, October 1981.

<sup>93</sup> *Sanko Harvest*, Panama flagged FOC struck a reef off Esperance, Western Australia, February 1991.

<sup>94</sup> See INCE & Co., Pushing the limits: IMO announces increase in the limits of liability for ship-owners, 2012

<sup>95</sup> Ammonium nitrate in the presence of fuel oil (AN/FO) is a widely used bulk industrial explosive mixture.

<sup>96</sup> INCE & Co., op. cit.

- 9.52. The Protection of the Sea Levy charged by AMSA to ships (see Section 19 of the Submission) was increased by 3 cents per tonne in 2010 to cover costs associated with the Pacific Adventurer disaster. On 1 July 2014, the Levy was lowered back to the 2010 level of 11.25 cents per tonne. The increase also paid for a \$10 million pollution response reserve and an upgrade of AMSA's pollution response stockpile.<sup>97</sup>
- 9.53. The Australian Transport Safety Bureau (ATSB) investigation found that the lashings on the containers were loose and in poor condition so that when the ship encountered poor weather and synchronous rolling the lashings failed, resulting in the loss of 31 containers of ammonium nitrate fertiliser (a dangerous good under the International Maritime Dangerous Goods Code).<sup>98</sup>
- 9.54. AMSA had inspected the vessel in October 2008 (Darwin) and December 2008 (Newcastle) and identified 11 defects, which were rectified. However, the problem with the lashing equipment was not identified. Subsequently, AMSA introduced more rigorous cargo securing inspections and conducted a focussed campaign on cargo securing.<sup>99</sup>
- 9.55. Section 94 of the Navigation Act prohibits the employment of seafarers in the loading and unloading of vessels, including associated functions like lashing and unlashings. For safety and environmental reasons, Australian law requires that the loading and unloading of vessels be carried out only by trained maritime workers with appropriate licences and safety standards.
- 9.56. The ITF is concerned that with the proposed changes to Marine Order 32 (Cargo Handling Equipment), AMSA is to some extent withdrawing from the inspection of cargo handling equipment and deferring to state safety regulators who do not have AMSA's maritime expertise.

**Recommendation 14:** That AMSA maintain its full specialised maritime safety responsibilities for the inspection of cargo handling equipment and operations in ports, and maintain and strengthen this area of Marine Order 32 (Cargo Handling Equipment).

**Recommendation 15:** AMSA must not withdraw from port safety as per AMSA's proposed draft Marine Order 32. The *Pacific Adventurer* disaster demonstrates the direct connection between the safety of cargo handling equipment in port and safety at sea. The multiple state OHS regulators do not have the expertise to ensure maritime safety is consistently enforced in the very hazardous,

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<sup>97</sup> Department of Infrastructure and Regional Development, Budget Statements 2014-15, Australian Maritime Safety Authority, Section 3: Explanatory tables and budgeted financial statements.

<sup>98</sup> ATSB, Independent investigation into the loss of containers from the Hong Kong registered container ship Pacific Adventurer off Cape Moreton, Queensland on 11 March 2009, Marine Occurrence Investigation No. 263.

<sup>99</sup> ATSB, Independent investigation into the loss of containers from the Hong Kong registered container ship Pacific Adventurer off Cape Moreton, Queensland on 11 March 2009, Marine Occurrence Investigation No. 263, p. 46.

environmentally sensitive and specialised shipping industry, particularly when it comes to specialised marine lashing and cargo stowage equipment on ships. A diminished role for AMSA as a specialist maritime regulator would be detrimental to safety of vessels, ports and the environment of Australian oceans.

**Recommendation 16:** Australia should push for a separate maximum liability to shipowners for bunker oil spills, to be included directly in the IMO *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001*. Bunker fuel is very damaging and is carried on virtually all international trading ships. The *Pacific Adventurer* and the *Rena* disasters show that the general limits on liability set in the IMO *Convention on Limitation of Liability for Maritime Claims (LLMC) 1976*, which currently apply to bunker spills, are much too low.

**Figure 9:** Pacific Adventurer bunker oil which impacted the eastern and northern beaches and headlands of Moreton Island, the eastern beaches of Bribie Island and the beaches of the Sunshine Coast.



Source: AMSA, 2009.

#### 9.57. Major incidents: Oil Spills from tankers

9.58. Table 5 highlights the major oil pollution incidents in Australian waters.

**Table 5:** Major oil pollution incidents in Australian waters.

Date	Vessel	Location	Oil amount (tonnes)	Flag
28/11/1903	<a href="#">Petriana</a>	Port Phillip Bay, VIC	1,300	Unknown
03/03/1970	<a href="#">Oceanic Grandeur</a>	Torres Strait QLD	1,100	Liberia
26/05/1974	<a href="#">Sygna</a>	Newcastle, NSW	700	Norway
14/07/1975	<a href="#">Princess Anne Marie</a>	Offshore, WA	14,800	Greece
10/09/1979	<a href="#">World Encouragement</a>	Botany Bay NSW	95	Liberia
29/10/1981	<a href="#">Anro Asia</a>	Bribie Island QLD	100	Singapore
22/01/1982	<a href="#">Esso Gippsland</a>	Port Stanvac SA	unknown	Australia
03/12/1987	<a href="#">Nella Dan</a>	Macquarie Island	125	Denmark
06/02/1988	<a href="#">Sir Alexander Glen</a>	Port Walcott, WA	450	Hong Kong
20/05/1988	<a href="#">Korean Star</a>	Cape Cuvier WA	600	Panama
28/07/1988	<a href="#">Al Qurain</a>	Portland VIC	184	Kuwait
21/05/1990	<a href="#">Arthur Phillip</a>	Cape Otway VIC	unknown	Australia
14/02/1991	<a href="#">Sanko Harvest</a>	Esperance WA	700	Panama
21/07/1991	<a href="#">Kirki</a>	WA	17,280	Greece
30/08/1992	<a href="#">Erg</a>	Port Bonython SA	300	Australia
10/07/1995	<a href="#">Iron Baron</a>	Hebe Reef TAS	325	Australia
26/07/1999	<a href="#">MV Torungen</a>	Varanus Island, WA	25	Panama
03/08/1999	<a href="#">Laura D'Amato</a>	Sydney NSW	250	Panama
18/12/1999	<a href="#">Sylvan Arrow</a>	Wilson's Promontory VIC	<2	Liberia/ Marshall Islands
02/09/2001	<a href="#">Pax Phoenix</a>	Holbourne Island, QLD	<1000 litres	Panama
25/12/2002	<a href="#">Pacific Quest</a>	Border Island , QLD	>70 km slick	Panama
24/01/2006	<a href="#">Global Peace</a>	Gladstone, QLD	25	Panama
11/03/2009	<a href="#">Pacific Adventurer</a>	Cape Moreton, QLD	270	Hong Kong
03/04/2010	<a href="#">Shen Neng1</a>	Great Keppel Island QLD	4	China
09/01/2012	<a href="#">MV Tycoon</a>	Christmas Island	102	Panama

Source: AMSA;<sup>100</sup> IHS Fairplay Sea-web database<sup>101</sup>

9.59. According to AMSA annual reports on their National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances, there have been approximately 1,558 oil spills in Australian waters in the last 10 years, from vessels, shore based sources, and oil

<sup>100</sup> AMSA, *Major Historical Incidents*, <<https://www.amsa.gov.au/environment/major-historical-incidents/>>

<sup>101</sup> Sea-Web <Sea-web.com>

exploration. This is an average of 156 spills a year, or one every 2.3 days. Oil spills caused by ships have increased by 20% since 2004.<sup>102</sup>

9.60. States where oil spills occur often have to bear the financial costs of these disasters even if they have played little role in causing the accident to occur.<sup>103</sup>

9.61. **Shen Neng 1**

9.62. On the 3<sup>rd</sup> of April 2010, the *Shen Neng 1*, a Chinese flagged bulk coal carrier, ran aground on the Douglas Shoal on the Great Barrier Reef after loading coal in Gladstone and while traversing on a well-known shipping route.<sup>104</sup> The subsequent environmental disaster highlights many weaknesses in Australia's environmental protection measures, international environmental conventions, international standards for fatigue and safety management, practices for recording accidents, and common corporate strategies for avoiding responsibility. The damage to the reef has still not been remediated and the Commonwealth is in the midst of legal action against the ship's owners.

9.63. Consequently, the impact ruptured the ship's bunker fuel tanks, releasing approximately 4 tonnes of fuel oil into the surrounding waters. Toxic antifouling paint was also embedded into the sea floor. The ship carved a 3 kilometre-long, 400,000 square metre scar onto the Douglas Shoal, which the CEO of the Great Barrier Reef Marine Park Authority (GBRMPA), Dr. Russell Reichelt referred to as the "largest known damage to the Great Barrier Reef caused by a ship."<sup>105</sup>

9.64. After an investigation, the Australian Transport Safety Bureau (ATSB) found that the grounding occurred due to four safety issues:<sup>106</sup>

- An ineffective fatigue management system (See Section 10.14 of the Submission). The chief mate had only slept for 2.5 hours in the 38.5 hours prior to the disaster, and was responsible for loading the cargo in Gladstone prior to the ship getting underway;<sup>107</sup>

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<sup>102</sup> Australian Maritime Safety Authority, National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances, Reports from 2004 to 2011; Australian Maritime Safety Authority, National Plan for Maritime Environmental Emergencies, Reports from 2012-2014.

<sup>103</sup> T Shaughnessy & E Tobin, *Flags of Inconvenience: Freedom and Insecurity on the High Seas*, p. 20

<sup>104</sup> Australian Maritime Safety Authority, *Shen Neng 1*, retrieved 28 July ([https://www.amsa.gov.au/environment/major-historical-incidents/Shen\\_Neng1/index.asp](https://www.amsa.gov.au/environment/major-historical-incidents/Shen_Neng1/index.asp))

<sup>105</sup> Isobel Roe, *Barrier Reef spill: Commonwealth launches court bid to recover costs from Shen Neng One*, ABC News, May 2015

<sup>106</sup> Australian Transport Safety Bureau, *Independent investigation into the grounding of the Chinese registered bulk carrier Shen Neng 1 on Douglas Shoal, Queensland 3 April 2010*, April 2011.

<sup>107</sup> Project Horizon, 2012, *Project Horizon – a wake-up call*, p.7

- Insufficient guidance in relation to the proper use of passage plans;
- Compulsory pilotage and active monitoring of ships by the Great Barrier Reef and Torres Strait Vessel Traffic Service (REEFVTS), (established to improve the safety and efficiency of vessel traffic and to protect the environment), was not then in place; and
- No visual cues to warn the chief mate or seamen on lookout duty as to the underwater dangers directly ahead of the ship.

9.65. Dr. Reichelt further revealed in a May 2015 press release “despite ongoing attempts to have the ship’s owners pay for damages, the Commonwealth was unsuccessful in securing funds for the ship owner or its insurer to clean-up and remediate the site ... This is why the Commonwealth has had no alternative but to take legal action in the Federal Court.” The action is for “damages from the ship’s owner for the cost of remediation of the shoal.” The trial is listed for April 2016 in Brisbane.<sup>108</sup>

9.66. The ship’s owner was at the time, and remains, the Shenzhen Group Energy Co Ltd, based in Guangdong, China. The ship’s insurer was at the time, and remains the ‘London P&I Club’, which is based in London and is the insurer for approximately 1,285 international ships.<sup>109</sup>

9.67. According to Greenpeace, as of yet, no work to restore the reef by removing the toxic paint has occurred and further, it is expected that the site of impact will take decades to recover from the damage.<sup>110</sup>

9.68. The ATSB report recommended ‘Safety Action’ be taken with regards to fatigue management by the ship’s manager, Tosco Keymax International Ship Management Company (based in China). Tosco Keymax was the ship’s ‘Document of Compliance (DOC) holder’ at the time of the disaster. The DOC holder is defined within the IMO’s International Safety Management Code as:

“the Owner of the ship or any other organization or person such as the Manager, or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the Shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the Code.”<sup>111</sup>

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<sup>108</sup> Great Barrier Reef Marine Park Authority, *Shen Neng 1 grounding: Statement*, 27 May 2015.

<sup>109</sup> The London P&I Club, Overview 2015. Calculated based on figures in report (pg.3) of 54 million entered tonnage of ships with an average size of 42,000 DWT.

<sup>110</sup> Greenpeace. Great Barrier Grief: Risks to the Great Barrier Reef World Heritage Area, March 2015

<sup>111</sup> IMO Assembly Resolution A.741(18) – 1993, The International Safety Management Code, Annex, paragraph 1.1.2.

- 9.69. The ATSB was clearly dissatisfied with the response it received from the ship management company, recommending that the company ‘takes further safety action to address this safety issue’.<sup>112</sup>

#### **4.1 Tosco Keymax International Ship Management Company**

##### **4.1.1 Fatigue management**

###### ***Significant safety issue***

There was no effective fatigue management system in place on board *Shen Neng 1* to ensure that the bridge watchkeeper was fit to stand a navigational watch after the loading in Gladstone.

###### ***Response from Tosco Keymax International***

The ATSB has been advised by Tosco Keymax International that since the incident, in accordance with the company’s policy of continuous improvement, Tosco Keymax has implemented additional inspection regimes and provided information and further training to ship’s staff relevant to issues arising from the grounding.

###### ***ATSB assessment of action***

The ATSB remains concerned that there is no proper guidance provided to the master or crew with regard to how fatigue levels should be managed and when someone should make the fact known that they might not be fit to undertake a navigational watch.

###### ***ATSB safety recommendation MO-2010-003-SR-005***

The Australian Transport Safety Bureau recommends that Tosco Keymax International takes further safety action to address this safety issue.

- 9.70. The ATSB report found that the recorded hours of work and rest on the ship did not reflect actual hours worked, and that the crew ‘was only completing the form so that an inspector (auditor or surveyor) could see that the hours were being recorded.’ This issue will be discussed in greater detail in Section 12 . Further:

‘the recording of hours merely to pass an inspection is an indication that the system was not being used as a proactive means to properly manage the fatigue of watchkeepers. The result is a record which appears to fulfil the regulatory working

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<sup>112</sup> Australian Transport Safety Bureau, Independent investigation into the grounding of the Chinese registered bulk carrier *Shen Neng 1* on Douglas Shoal, Queensland 3 April 2010, April 2011, p. 43.

and rest hour requirements but which does not properly fulfil the fatigue management intention of the STCW Convention and Code'.<sup>113</sup>

- 9.71. The ATSB report also provides further detail on the broader issue of regulatory responsibility for the fatigue management system, with the ship manager arguing that the ship's fatigue management procedure was approved by the Chinese maritime authorities and compliant with the International Safety Management code:<sup>114</sup>

In their submission, Tosco Keymax International stated that:

At the time of the grounding, the vessel's Safety Management System was, and continues to be, approved by the Government of the People's Republic of China as being compliant with the requirements of the International Safety Management (ISM) Code. The ship's SMS contained fatigue management and passage planning procedures in compliance with industry standards and international regulations.

Despite the ship's SMS being approved by the Chinese maritime administration, it did not contain any guidance to assist in, or requirement for, the active management or review of ship operations and watchkeeper duty schedules which could lead to raised fatigue levels in a particular crew member, in this case, the chief mate.

*Shen Neng 1*'s SMS did not support the requirements, or the intent, of the STCW Convention in relation to fatigue management. Previous audits of the SMS did not highlight the fact that there was no proper guidance provided to the master or crew with regard to how their fatigue levels should be managed and when someone should make the fact known that they might not be fit to undertake a navigational watch.

The lack of proper fatigue management guidance in *Shen Neng 1*'s SMS meant that the individual crew members were largely responsible for managing their own fatigue levels. However, the crew members simply did their job and recorded their hours of work in a way which would not reflect badly on themselves, the master or the ship managers.

- 9.72. Subsequent to the disaster, the *Shen Neng 1* owners changed the name of the ship to the *Jia Yong* and, then changed the management company and DOC Holder responsible for safety management on board the ship. By the time the ATSB report was released in April 2011, with the recommendations directed to Tosco Keymax International Ship Management Company, that company was no longer associated with the ship. Instead, the DOC Holder had become 'Tianjin Cosbulk Ship Management' (China) in February 2011, and was then changed to 'Cosco Wallem Ship Management' (China) in March 2011 (Figure 10).

- 9.73. IHS Fairplay identifies 'Tosco Keymax International Ship Management' (company number 5142491) as a subsidiary of COSCO. Tosco Keymax is the current DOC Holder for 13 ships,

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<sup>113</sup> Australian Transport Safety Bureau, Independent investigation into the grounding of the Chinese registered bulk carrier *Shen Neng 1* on Douglas Shoal, Queensland 3 April 2010, April 2011, p. 27.

<sup>114</sup> Australian Transport Safety Bureau, Independent investigation into the grounding of the Chinese registered bulk carrier *Shen Neng 1* on Douglas Shoal, Queensland 3 April 2010, April 2011, p. 28.



most of which trade to Australasia. The *Shen Neng 1*'s current DOC Holder 'Cosco Wallem Ship Management' is also a subsidiary of COSCO and is the DOC holder for 25 ships. In total, COSCO is the owner of a fleet of 349 ships, split up between approximately 42 different companies.

**Figure 10:** Record of ownership, name change and DOC Company for the *Shen Neng 1*.

P&I Club History	
Date	P&I Club
2007-06-13	London Steam-Ship Owners' Mut
2006-05-10	Britannia Steam Ship Ins Assoc

OWNERSHIP					
Group Owner	<a href="#">Shenzhen Energy Group Co Ltd</a>	Location	China, People's Republic Of		
Shipmanager	<a href="#">Shenzhen Energy Transport</a>	Location	China, People's Republic Of		
Operator	<a href="#">Shenzhen Energy Transport</a>	Location	China, People's Republic Of		
DOC Company	<a href="#">COSCO Wallem Ship Management</a>	Location	China, People's Republic Of		
Registered Owner	<a href="#">Shenzhen Energy Transport</a>	Location	China, People's Republic Of		IMO Company No (DOC) 5177491
Technical Manager	<a href="#">COSCO Wallem Ship Management</a>	Location	China, People's Republic Of		IMO Registered Owner No 5326693
Bareboat Owner		Location	China, People's Republic Of		

\* Please kindly be advised that the Location referred to above, is the companies address location; for full details of the company(s) please follow the hyperlinks through the company name.

COMMERCIAL HISTORY									
Date	Name	Flag	Group Owner	Operator	Manager	Registered Owner	DOC	Price	
2011-03				<a href="#">Shenzhen Energy Transport</a>	<a href="#">Shenzhen Energy Transport</a>		<a href="#">COSCO Wallem Ship Management</a>		
2011-02	JIA YONG			<a href="#">Tianjin Cosbulk Ship Mgmt</a>	<a href="#">Tianjin Cosbulk Ship Mgmt</a>		<a href="#">Tianjin Cosbulk Ship Mgmt</a>		
2008-02			<a href="#">Shenzhen Energy Group Co Ltd</a>						
2007-09	Sheng Neng 1								
2007-06		China, People's Republic Of		<a href="#">TOSCO KEYMAX Intl Ship Mgmt</a>	<a href="#">TOSCO KEYMAX Intl Ship Mgmt</a>	<a href="#">Shenzhen Energy Transport</a>	<a href="#">TOSCO KEYMAX Intl Ship Mgmt</a>		
2007-04			<a href="#">Blenheim Shipping UK Ltd</a>						
2006-12				<a href="#">Blenheim Shipping UK Ltd</a>		<a href="#">Arragon Shipping UK Ltd</a>			
2003-03				<a href="#">Blenheim Shipping UK Ltd</a>		<a href="#">Arragon Shipping UK Ltd</a>			
1998-08					<a href="#">Scinicariello Ship Management</a>				
1998-06			<a href="#">Blenheim Shipping Services Ltd</a>			<a href="#">Arragon Shipping</a>			
1997-11							Unknown		
1993-06	Bestore	Isle Of Man							
1993-00	Bestor	Liberia	<a href="#">Scinicariello Ship Management</a>	<a href="#">Scinicariello Ship Management</a>	<a href="#">Scinicariello Augustea Ship</a>	<a href="#">Asarina Shipping Ltd</a>			

Originally Bestor, Newbuilding price \$33,994,112

CLASS	
Class: China Classification Society (2007-06-00), Class ID: 93G1046	

**Source:** IHS Fairplay commercial ship database, accessed 16 September 2015.

- 9.74. Given the scale of the incident, the problems identified by the ATSB, and the ongoing legal action against the owner of the ship, we point to the fact that none of this information is reflected in the *Shen Neng 1*'s commercial Port State Control inspection records, as reflected on the IHS Fairplay commercial ship database (Figure 11).

**Figure 11:** Record of Port State Control inspections and detentions of the *Shen Neng 1* (renamed to the *Jia Yong*) on the Port State Control commercial ship database.

#### INSPECTIONS & DETENTIONS

##### Data as reported by Port State Control Authorities

Authority	Status	Date	Place	Name	Flag	Class	Owner
Tokyo MOU	Inspection	2013-03-26	Samarinda	Jia Yong	China	China Classification Society	
Tokyo MOU	Inspection	2007-11-22	Fushiki	Shen Neng 1	China	China Classification Society	
AMSA	Inspection	2006-08-07	Port Hedland Office	Bestore	Isle Of Man, Uk	American Bureau Of Shipping (Abs)	Arragon Shipping Uk Ltd
Black Sea MOU	Detention-Unk No. of Days	2006-04-25	Constanta	Bestore	Isle Of Man (Uk)	American Bureau Of Shipping	
4 Defects:							
Water level indicator							
hull - corrosion							
signs, indicators (WT doors, fire detectors, fire dampers, ventilation)							
prevention of pollution by oil (IOPP)							
AMSA	Inspection	2005-07-27	Fremantle	Bestore	Isle Of Man, Uk	American Bureau Of Shipping (Abs)	Arragon Shipping Uk Ltd
1 Defect:							
lifeboats - Lifeboat onboard release not correctly reset (rectify deficiency within 14 days)							
Paris MOU	Inspection	2004-09-09	Ijmuiden	Bestore	Man,Isle Of,Uk	American Bureau Of Shipping (Abs)	
Paris MOU	Inspection	2004-01-22	Shannon Estuary (all ports)	Bestore	Man Isle Of	American Bureau Of Shipping (Abs)	
Indian Ocean MOU	Inspection	2002-09-13	Dampier	Bestore	Isle Of Man	American Bureau Of Shipping	
Paris MOU	Inspection	2001-03-07	Livorno	Bestore	Man Isle Of	American Bureau Of Shipping	

Source: IHS Fairplay commercial ship database, accessed 16 September 2015.

- 9.75. The invisibility of the Great Barrier Reef disaster and the ATSB recommendations is further reflected in the records for ship owners, the Shenzhen Group Energy Co Ltd (China), which owns 6 ships, all of which are recorded as trading in the Australasian area in the past year. The 'Inspection History' of the fleet shows that only one ship in the fleet has ever been so much as detained, in 2006 (Figure 12).

**Figure 12:** Shenzhen Group Energy Co Ltd (China) fleet of owned ships and their safety record as reflected in ship detentions, including the *Jia Yong* (formerly *Shen Neng 1*)

In Service Fleet										
LRNO	Ship Name	Flag	Formula Dwt	Ship Type	Built	P&I Club	Class	Hull Type	Casualty	
9492737	HARMONY	Hong Kong, China	60,577	Bulk Carrier	2011-11	Swedish Cl...	CC			
Australasia, Far East, South East Asia										
9172557	JIA CHANG	China, People's Republic Of	55,934	Bulk Carrier	1997-11	London Ste...	CC			
Mediterranean, UK - Continent - Baltic, Australasia, West Africa, Gulf - Red Sea - India, Far East, US West Coast, East Coast South America, South East Asia, US Gulf										
9492608	JIA TAI	China, People's Republic Of	60,577	Bulk Carrier	2011-07	London Ste...	CC			
Australasia, Gulf - Red Sea - India, Far East, South East Asia										
9492593	JIA TONG	China, People's Republic Of	60,577	Bulk Carrier	2011-04	London Ste...	CC			
Australasia, East and South Africa, West Africa, Gulf - Red Sea - India, Far East, US West Coast, East Coast South America, South East Asia										
9040871	JIA YONG	China, People's Republic Of	56,546	Bulk Carrier	1993-06	London Ste...	CC		Y	
Mediterranean, UK - Continent - Baltic, Australasia, Gulf - Red Sea - India, Far East, US West Coast, East Coast South America, South East Asia, US Gulf										
9492725	PEACE	Hong Kong, China	60,577	Bulk Carrier	2011-09	Swedish Cl...	CC			
Australasia, Far East, South East Asia										
Newbuilding Fleet										
Dead Fleet										
PSC INSPECTION HISTORY OF SHIPS CURRENTLY ASSOCIATED WITH THIS COMPANY										
Year of Inspection	Inspection	Detention	Total							
2015	4		4							
2014	8		8							
2013	6		6							
2012	13		13							
2011	3		3							
2010			0							
2009	4		4							
2008	4		4							
2007	5		5							
2006	4	1	5							
Total	51	1	52							

Source: IHS Fairplay commercial ship database, accessed 16 September 2015.

- 9.76. The ISM Code appears to allow for a total contracting-out of safety management, which means that ship owners involved in safety and environmental incidents can simply switch DOC companies to dissociate themselves from problems on their ships.

- 9.77. In the case of the *Shen Neng 1*, the change of management company occurred between two subsidiaries of the same company.
- 9.78. It appears that there is no provision for the outcomes of formal investigations by national maritime safety investigators to be incorporated into ship's Port State Control inspection records.
- 9.79. More than five years after the *Shen Neng 1* Great Barrier reef disaster, all the companies and industries involved remain in operation with an apparently a clean safety record, yet apparently the resources do not exist to clean up and remediate the damage caused by the ship to the Great Barrier Reef.
- 9.80. The Commonwealth is claiming \$194 million in damages from Shenzhen Energy Transport Co. In a hearing on 23 July 2015, the Commonwealth filed an interlocutory application for discovery of a wide range of documents relating to the ship's operation, including logbooks, correspondence, maintenance records, and relevant parts of the safety management system, in the days leading up to the disaster and following it.<sup>115</sup>
- 9.81. The Commonwealth was refused access to these documents, and ordered to pay legal costs to Shenzhen Energy Transport Co. The basis was that the Convention for Liability for Maritime Claims 1976 and the associated *Limitation of Liability for Maritime Claims Act 1989* (Cth) 'clearly limits the liability for claims to "distinct occasions"', eg. the moment of the grounding.<sup>116</sup>
- 9.82. For its part, Shenzhen Energy Transport Co said that the grounding 'was caused solely by the negligent navigation of the Chief Officer of the vessel', Xuegang Wang. This is the officer who had slept for only 2.5 hours in the 38.5 hours prior to the disaster due to going on watch only a few hours after being responsible for loading the ship's cargo.<sup>117</sup> He was subsequently jailed for 3 months.<sup>118</sup> The captain of the ship was personally fined \$25,000.<sup>119</sup>
- 9.83. In a Concentrated Inspection Campaign to address seafarers' fatigue in 2014 (discussed further in paragraph 10.14 of this Submission), the Tokyo Port State Control MoU (of which Australia is a part) said that such circumstances were grounds for immediate detention of a ship. The checklist used for the campaign said:

'if the PSCO determines that a watchkeeper due to take the first or relieving watch at the commencement of a voyage has not had, or will not have, the minimum rest

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<sup>115</sup> *Commonwealth of Australia v Shenzhen Energy Transport Co Ltd* [2015] FCA 757 (23 July 2015).

<sup>116</sup> *Commonwealth of Australia v Shenzhen Energy Transport Co Ltd* [2015] FCA 757 (23 July 2015).

<sup>117</sup> *Commonwealth of Australia v Shenzhen Energy Transport Co Ltd* [2015] FCA 757 (23 July 2015).

<sup>118</sup> Rae Wilson, Three months' jail for Chinese bulk carrier damage to Reef, *Sunshine Coast Daily*, 26 Oct 2012.

<sup>119</sup> William Rollo, Captain fined \$25k over Shen Neng oil spill, 14 November 2012, *ABC News*

periods required in STCW, then the PSCO should consider detention of the vessel until such time as those rest periods have been taken’.

- 9.84. The case raises a number of significant systemic questions: How were the owners and the ship’s insurers able to avoid payments for damages, clean-up costs and remediation of the damaged reef site? Why has it taken so long for the Australian government to receive compensation? Why was the ship allowed to travel through a sensitive area under watch of a seafarer who was likely to be extremely fatigued? Given the plethora of international conventions to protect the marine environment that apply, why does the government have to take the shipowners to the Federal Court for the damage to be compensated?
- 9.85. The Protection of the Sea Levy charged by AMSA to ships for pollution and emergency response (see Section 19 of the Submission) was lowered by 3 cents per tonne back to the 2010 rate on 1 July 2014, following an increase to pay for the *Pacific Adventurer* clean up. This reduction resulted in a reduction in AMSA’s funds available for pollution and emergency response by \$5.5 million from 2013-14 to 2014-15.<sup>120</sup> Yet at this time the *Shen Neng 1* clean up was still outstanding. Why was this levy not used to pay for the clean-up while costs were being pursued from the vessel owners?

**Recommendation 17:** The Australian government must provide a clear account of why it is that toxic materials remain on the reef more five years after the grounding of the *Sheng Neng 1*, and why, despite Australia’s extensive marine environmental legislation and multiple international conventions it is a party to, the resources do not exist to clean up and remediate the damage caused by the ship to the Great Barrier Reef. Steps must be taken to urgently redress this gap.

**Recommendation 18:** International marine environment protection conventions do not currently provide for damage caused to the seabed by the ship’s hull, which is particularly important in the case of groundings on coral reefs. Australia should seek to have this gap addressed at the IMO.

**Recommendation 19:** AMSA should include maritime safety investigations to be formally incorporated into Port State Control inspection records, both by the Australian transport safety bureau and internationally.

**Recommendation 20:** The ATSB should investigate whether its ‘Safety Actions’ recommended to Tosco Keymax were transferred to the new DOC Holder ‘Cosco Wallem Ship Management’ and why this change of DOC Holder was made in the midst of the investigation.

**Recommendation 21:** Companies should not be able to fully contract out their safety responsibilities under the ISM Code. Their ability to do so should be recognised as a significant risk by AMSA, and Australia should seek to change this area of the ISM Code.

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<sup>120</sup> Department of Infrastructure and Regional Development, Budget Statements 2014-15, Australian Maritime Safety Authority, Section 3: Explanatory tables and budgeted financial statements.

**Recommendation 22:** The Department of Infrastructure and Regional Development should explain why the Protection of the Sea Levy charged by AMSA to ships for pollution and emergency response was lowered by 3 cents per tonne back to the 2010 rate on 1 July 2014, when the *Shen Neng 1* clean up was still outstanding. The Department should be encouraged to raise the levy to a sufficient level to begin the clean-up, while costs are being recovered from the ship owner.

**Recommendation 23:** AMSA should investigate whether the definition of a ‘distinct occasion’ in the Convention for Liability for Maritime Claims 1976 and the associated *Limitation of Liability for Maritime Claims Act 1989* (Cth) prevents the Australian government and other governments from investigating and properly addressing the systemic problems leading to an accident, and whether these provisions should be changed.

**Recommendation 24:** In the light of the *Shen Neng 1* disaster, the Australian government should investigate whether it has sufficient tools to efficiently seek damages when ships strike Australian reefs, given that these circumstances are not covered by IMO conventions. For example, s.61AHA of the *Great Barrier Reef Marine Park Act 1975* (Annex C) gives the Commonwealth the right to seek remediation orders, but only through the Federal Court. Going through the Federal Court appears to be adding a significant delay to the process of seeking damages in the *Shen Neng 1*. Is there a more efficient process? Also, what recourse do the Commonwealth or States have if a ship strikes a reef that is not protected by the *Great Barrier Reef Marine Park Act 1975*, for example, the Ningaloo Reef or the Torres Strait?

#### 9.86. **MV Tycoon**

9.87. Another example of ship owners passing on their responsibility is evident from the grounding of the *MV Tycoon*. On January 8<sup>th</sup> 2012, one of the permanent mooring lines on the Panamanian flag ship, *MV Tycoon*, came free from its anchor at Flying Fish Cove, Christmas Island.

9.88. As the sea conditions deteriorated, the ship moved closer to the rock face, eventually being smashed by sea and wind against the cliff. Ultimately, the ship’s engine room began to flood through a tear in the hull and shortly after, the 15 Burmese crew abandoned ship and were rescued by the Royal Australian Navy. Although there were attempts to move it away, *Tycoon* suffered a catastrophic failure of its hull releasing approximately 102 tonnes of intermediate fuel oil, 11,000 litres of lubricant oil, 32 tonnes of diesel oil and 260 tonnes of phosphate into the sea.<sup>121</sup>

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<sup>121</sup> Australian Transport Safety Bureau, *Foundering of the general cargo ship Tycoon*, January 2012. gCaptain, *Australian Government Steps in to Remove M/V Tycoon Wreckage from Christmas Island*, April 2012.

9.89. The ATSB found several instances of negligence from the ship's Master and the Port Managers, which, if they were rectified in time, could have ultimately, prevented the disaster.<sup>122</sup>

9.90. Following the grounding, the *MV Tycoon*'s owner, Singapore's Tycoon Navigation SA, abandoned any attempts to salvage the vessel, forcing the Australian Government to step in and foot the \$5 million bill for her removal and remediation of the site.<sup>123</sup> The government then pursued the owners for clean-up costs.<sup>124</sup>

#### 9.91. **Rena**

9.92. On the 5<sup>th</sup> of October 2011 the Liberian flag container ship *Rena* ran aground at full speed in New Zealand spilling approximately 900 containers overboard and more than 300 tonnes of toxic bunker fuel.<sup>125</sup>

9.93. The Transport Accident Investigation Commission of New Zealand concluded that the factors that had directly *contributed* to the grounding of the container ship included that the Filipino crew:<sup>126</sup>

- Did not follow standard good practice for planning and executing the voyage
- Did not follow standard good practice for navigation watch keeping
- Did not follow standard good practice when taking over control of the ship

9.94. The failure of the crew to follow industry best practice guidelines for making and executing the passage plan on the accident voyage was not an isolated case. A total of 93 deficiencies in 10 years (identified by Port State Control around the world) were identified on the *Rena*.

9.95. Two months before the grounding, AMSA inspected the *Rena* in Fremantle and found 17 deficiencies and detained the ship.<sup>127</sup> The repetitive nature of the acts, omissions from one voyage to the next, and the fact that similar issues were evident for the most recent 6 coastal voyages (including the accident voyage) suggests that the failures in design and execution of

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<sup>122</sup> *ibid*

<sup>123</sup> *ibid*

<sup>124</sup> ABC News, The Federal Government considering legal action to recover shipwreck salvage costs, 16 Jul 2013.

<sup>125</sup> M Schuler, How many Shipping containers are really lost at sea, June 2014; IHS Global Limited, *Rena*'s salvage on hold pending court decision, February 2015.

<sup>126</sup> New Zealand Transport Accident Investigation Commission, Inquiry 11-204: Container ship MV *Rena* grounding, on Astrolabe Reef, 5 October 2011, November 2014.

<sup>127</sup> Sea-Web <sea-web.com>

the passage plan that led to the grounding were not one-off failures but indicative of a wider systemic safety issue.<sup>128</sup>

9.96. The investigation notes that “the *Rena* had called at five New Zealand ports in six days. The grounding occurred at 0214 on the eighth day.”

9.97. Professor Phillipa Gander of the Sleep/Wake Research Institute at the Massey University found that “The master did not have a minimum rest period of six hours on any of the six days preceding the grounding.”<sup>129</sup>

1.85. With regards to the ISM Code Safety Management System, the investigation found:

**Findings:**

13. The master and crew of the *Rena* were not following navigation and watchkeeping standards and procedures set down in the safety management system on board the *Rena* for at least the six coastal voyages leading up to the grounding. The failure to follow these standards set out in the *Rena*’s safety management system was a factor contributing to the grounding.
14. There were clear indications that the safety management system on board the *Rena* was not functioning properly with respect to bridge and navigation procedures.
15. The number of port state control deficiencies identified against the *Rena* and its detention in Fremantle for non-compliance with statutory requirements indicate that the safety management system as applied on board the *Rena* was not meeting the objectives of the ISM Code.

9.98. The case of the *Rena* highlights the very real difficulty the Port State Control system has in ensuring that safe systems of work are implemented on board ships. The *Rena* had received plenty of attention from Port State Control, with 6 different inspections in different ports in the 12 months preceding the disaster, including Fremantle and Port Botany in Australia. Port State Control found identified problems with the safety management system. Yet these inspections did not change the organisation of work on board the ship itself. See Section 12 for a more detailed discussion of this challenge.

9.99. The case of the *Rena* also highlights the important role of dockworkers in identifying unsafe ships. Dockworkers at Patrick in Fremantle found significant problems with the ship, including a dysfunctional GPS, improper rest hours, and a significant backpay claim from the crew. They refused to work it, and requested AMSA to do an inspection of the ship.

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<sup>128</sup> ATSB; Sea-Web

<sup>129</sup> New Zealand Transport Accident Investigation Commission, *Inquiry 11-204: Container ship MV Rena grounding, on Astrolabe Reef, 5 October 2011*, November 2014, p.29, 31.

**Recommendation 25:** International and FOC shipping represents a risk to Australia's coastal environment, with several examples of international owners simply not taking responsibility for environmental disasters caused by their ships. In addition to the damage caused to the marine environment, this can cause significant delay in clean-up operations and burden to Australian agencies and taxpayers.

**Recommendation 26:** Australian ships are safer for the environment due to:

- Constant inspection by AMSA,
- A high level of crew training,
- National crew with a vested interest in protecting the environment,
- Proper management of crew fatigue due to hours of work, amounts of leave, and swing lengths being in line with Australian workplace standards,
- The *WHS Act* prevents discrimination against workers refusing unsafe work,
- Some degree of whistle-blower protection in Australian law, and
- A union that can protect seafarers who find systemic safety or environmental problems at their work.

## **10. Conditions and minimum employment law standards for international seafarers on Flag of Convenience ships**

- 10.1. The history of the ITF's FOC campaign, the fact that shipowners and shippers are still overwhelmingly based in wealthier countries, and the current enormous levels of global inequality mean that seafarers from developing countries can often earn higher wages in international shipping than they are able to if they were employed in domestic industries. This makes can make international seafaring an attractive way of earning and saving money.
- 10.2. Yet despite the potential for wages that may be attractive to seafarers from impoverished countries, employment for international seafarers is exhausting, precarious, and subject to fragmented management and regulation. Seafarers work extremely long hours and are frequently away from home for a year at a time, and most seafarers, particularly ratings, have no permanent contract, and must seek a new one each time they go to sea. It is a very hazardous industry with a significant level of fatalities, serious injuries, and work-related diseases. These conditions are not only a risk to seafarers working in the industry, they are a risk to ship safety and the environment.



### 10.3. Precarity of employment

10.4. Seafarers are typically recruited by a crewing agency for a single voyage contract for 9 months (ITF Agreement standard) to one year (MLC maximum - although many FOC operators are manufacturing ways to get around the MLC compliance and extend contracts to more than 12 months). Seafarers are effectively unemployed between voyages and then must seek a new contract in order to return to work. A bad report from a captain can make finding another contract difficult as agencies may communicate with each other. It is reported that a blacklist is circulated in the Philippines of seafarers who engage in union activity or call the ITF. The result is that ‘seafarers of all ranks report that they fear for their jobs’.<sup>130</sup>

**Figure 13:** Seafarers being recruited in Manila, September 2015.



**Photo:** ITF Philippines.

<sup>130</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave McMillan, p.92-4.

**Figure 14:** Seafarers being recruited on the street in Manila, September 2015.



**Photo:** ITF Philippines.

- 10.5. A seafarer who draws Port State Control attention to a problem on board a ship may also face difficulty finding future employment. A seafarer who acts as a witness in a prosecution of their employer by a national maritime authority such as AMSA for a violation of environmental protection Conventions is taking an even greater personal risk.
- 10.6. Seafarers are likely to work on a different ship with a different crew each time they go to sea.
- 10.7. Officers may have shorter contracts and are more likely to have permanent employment, however, only the top two officers are likely to stay with a vessel for any length of time.
- 10.8. The precarious employment of international seafarers has significant implications for the effective regulation of the shipping industry, and in particular the safety management system used on board international ships - the ISM Code.
- 10.9. The strongly hierarchical maritime culture combined with precarious employment can also lead to significant workplace bullying and a culture of impunity. Such appears to be the case on board the *Sage Sagittarius*, where a crew member was bullied by the captain and other crew for being gay, a circumstance that appears to have precipitated the death of three people in suspicious circumstances .
- 10.10. The MLC mandates the use of an on-board complaints system before complaints are taken ashore. Yet in circumstances such as those outlined in paragraph 10.9, this is dangerous and

impractical. The likelihood of a seafarer lodging a serious onboard complaint on an FOC is slim given their vulnerability.

10.11. In addition to the fear of being blacklisted, seafarers also worry about being criminalised for reporting accidents at sea. A recent study conducted by Seafarers' Rights International found that almost half of the seafarers surveyed said that they would be reluctant to co-operate fully and openly with casualty inquiries and accident investigators because of concerns they could be implicated in a crime; because they do not trust the authorities; and because they are concerned that co-operation would have a prejudicial effect upon their employment.<sup>131</sup>

10.12. As many as 85% of the seafarers surveyed said that they are concerned about facing criminal charges. The main reasons were that seafarers feel they are scapegoated. Also, seafarers feel there are numerous regulations which make them more vulnerable to being criminalised. As criminal laws are for the most part targeted at nationals, international mobile workers like seafarers are more exposed to criminal proceedings than their shore-based counterparts.<sup>132</sup>

10.13. The precarious employment of international seafarers is in stark contrast to Australian seafarers in the blue water trades. Many of these workers have permanent contracts and return to the same ship after each period of leave. They are therefore well acquainted with the ship, with other crew on board, with the company's management system and expectations, and with the regulatory authorities they may encounter on a voyage.

**Recommendation 27:** AMSA must train its inspectors and design its Port State Control inspection and onshore complaints system recognising that it is frequently unsafe for seafarers to use the MLC's on-board complaints system before raising issues with Port State Control. The confidential reporting system should be better advertised with notices given to all ships, masters, and companies visiting Australia, and distributed directly to crew during inspections.

#### 10.14. Fatigue

10.15. Fatigue is a serious problem for international seafarers, who work extremely long hours over up to 12 months, while living in their workplace with only very limited opportunities to take any shore leave during their contracted period of work. Seafarers may also have difficulty getting quality sleep due to noise and vibration on board, and frequent port calls and cargo work. 53% of seafarers told a 2006 Cardiff University survey that they had no opportunity to have six hours of uninterrupted sleep.<sup>133</sup>

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<sup>131</sup> Maritime Risk International, *Fear of Criminalisation grows*, June 2013.

<sup>132</sup> Maritime Risk International, *Fear of Criminalisation grows*, June 2013.

<sup>133</sup> Project Horizon, 2012, *Project Horizon – a wake-up call*, p. 7.

- 10.16. The MLC stipulates that crew shall not be required to work more than 12 months. As identified earlier bad FOC operators are manipulating the stated intent of the MLC to extend the length to over 12 months. ITF Inspectors in Australia frequently find ships where crew have been required to stay on board for much longer. ITF Agreements stipulate 9 months plus or minus one month.
- 10.17. A survey of seafarers found that nearly half of those surveyed felt that their working hours sometime presented a danger to their personal safety.<sup>134</sup> Fatigue is also related to stress, poor mental health, and other health issues. Studies have found unusually high level of suicides among seafarers from the UK, Denmark, Finland and India, especially among ratings and catering crew on deep-sea vessels that are away from home for the longest periods.<sup>135</sup>
- 10.18. Fatigue is strongly linked to ship safety. A survey of 66 vessel incidents by the UK Marine Accident Investigation Branch found that the fundamentals of accidents ‘remain depressingly consistent: fatigued crews due to under-manning’.<sup>136</sup> Most of the recommendations from an ATSB investigation into Queensland coastal pilotage following the grounding of the piloted tanker *Atlantic Blue* in the Torres Strait related to fatigue and fatigue management.<sup>137</sup> Fatigue was shown to be a key causal factor in at least the following maritime disasters:
- the *Exxon Valdez* (Alaska, 1989)
  - the *Cita* (Scilly, 1997)
  - *Jambo* (Scotland, 2003)
  - the *Pasha Bulker* (Newcastle, 2007)
  - *Thor Gita* (death on board)
  - the *Shen Neng 1* (Australian Great Barrier Reef, 2010, see paragraph 9.61 of this submission).<sup>138</sup>
- 10.19. Current international conventions and Port State Control regimes inspect for hours of rest, not hours of work. Consequently, seafarers may be required to work up to 91 hours per week, and still meet the requirements of international conventions.
- 10.19.1. This is because the IMO Standards for the Training and Certification of Watchkeeping (STCW) Convention requires a minimum of 77 hours of rest in each 7-day period.

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<sup>134</sup> Wadsworth et al. 2006, Patterns of fatigue among seafarers during a tour of duty, *American Journal of Industrial Medicine*, 49(10): 836-844.

<sup>135</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave Macmillan, p.31-2.

<sup>136</sup> MAIB, 2004, *Bridge Watchkeeping Safety Study*, Southampton: Department for Transport.

<sup>137</sup> ATSB, 2012, Safety issue investigation into Queensland Coastal Pilotage.

<sup>138</sup> Project Horizon, 2012, Project Horizon – a wake-up call, p. 6-7.

10.19.2. The Maritime Labour Convention allows for EITHER a maximum 72 hours of work in a seven day period OR a minimum of 77 hours of rest in each 7 day period. However, recording only the hours of rest allows for 91 hours of work in a 7-day period instead of only 72 hours of work.

10.19.3. Given this option, ships record hours of rest, not hours of work:

24 hours per day over 7 days = 168 hours per week - 77 hours of rest  
= up to 91 hours of work in a 7-day period.

10.20. Under the STCW 2010 amendments, a 98-hour week is allowed for up to two weeks in 'exceptional' circumstances.

10.21. Australia's incorporation of these Conventions into Australian law through Marine Order 28 only requires that hours of rest, and not hours of work to be recorded (relevant sections are included in Annex A).

10.22. In July 2014 the Maritime Authorities of the Paris MoU (North Atlantic) and Tokyo MoU (Pacific, including Australia) announced a joint Concentrated Inspection Campaign to be held later in 2014 to ensure that ships were in compliance with the STCW minimum requirements for hours of rest.<sup>139</sup>

10.23. Both MoUs announced that they found 'unsatisfactory compliance' with even the STCW minimums. The main areas of concern were hours of rest not being properly recorded, and that watchkeeping personnel did not have sufficient rest. The Secretary General of the Paris MoU said that:

"Insufficient rest of watchkeeping personnel has already caused several incidents over the past years. It may be the cause of fatigue, which can have major consequences for safety and the environment. 2 watch systems are particularly vulnerable in this respect."<sup>140</sup>

10.24. The Tokyo MoU, which includes Australia, found:

- 1,589 'hours of rest' related deficiencies during 6,392 ship inspections,
- They detained 16 ships (the most common flag detained was Panamanian, with five ships. Other flags are not specified in the press release).

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<sup>139</sup> Paris MoU and Tokyo MoU, Launch of Joint Concentrated Inspection Campaign of STCW Hours of Rest, 28 July 2014.

<sup>140</sup> Paris MoU, Unsatisfactory compliance with hours of rest, 22 January 2014. Tokyo MoU, Unsatisfactory compliance with hours of rest, 18 May 2015.

- They found 241 cases of vessel manning not being in accordance with the minimum safe manning document.
- They found 232 problems with ‘shipboard working arrangements’ in relation to hours of rest.

10.25. The Tokyo MoU press release announcing the results highlighted that:

“Investigations into a number of recent incidents throughout the Asia-Pacific region have identified fatigue and insufficient rest of watchkeeping personnel as key contributing factors to those incidents. There has been a significant loss of human life and damage to the marine environment resulting from many of these incidents.”<sup>141</sup>

10.26. However, it is likely that even these alarming conclusions underestimate the scale of the problem. The Inspection Campaign was announced months in advance, and involved only a snapshot view of conditions on board during each inspection, as evidenced by the paperwork kept on each ship. A copy of the questionnaire used for the campaign is attached to the initial press release.<sup>142</sup>

10.27. ITF Inspectors in Australia have also frequently found that the official records of hours of rest do not correspond to the actual work undertaken by crew. This can be relatively easy to determine by comparing hours of rest records with the ship’s log and ship’s actual activities. For example, docking the ship usually requires all hands.

10.28. As the UK MAIB noted, fatigue is frequently linked to under-manning. Owners have reduced crew sizes by 60% since the 1970s, at the same time that vessel sizes have increased significantly. The result is longer and more intensified and flexible working hours for crew.<sup>143</sup> Scientific sleep research demonstrates that two-watch systems with crew working 6 hours on and 6 hours off are particularly fatiguing,<sup>144</sup> and 13 of the 16 ships detained during the Paris MoU Hours of Rest Inspection Campaign used this watch pattern.<sup>145</sup>

10.29. Due to cost-cutting, in some cases, ships are expected to run with such a small number of crew that it is impossible for them to operate while remaining within the hours of rest requirements - for example the 241 cases of ships violating their Minimum Safe Manning Document found by the Tokyo MoU.

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<sup>141</sup> Tokyo MoU, Unsatisfactory compliance with hours of rest, 18 May 2015.

<sup>142</sup> Paris MoU and Tokyo MoU, Launch of Joint Concentrated Inspection Campaign of STCW Hours of Rest, 28 July 2014.

<sup>143</sup> Alderton et al. The Global Seafarer – Living and working conditions in a globalised industry. Geneva: ILO.

<sup>144</sup> Project Horizon, 2012, Project Horizon – a wake-up call, p.27.

<sup>145</sup> Paris MoU, Unsatisfactory compliance with hours of rest, 22 January 2014.

- 10.30. Minimum manning levels for ships is determined by the Flag State of the ship. With competition among Flag of Convenience nations to secure income from ship registrations, there is a significant incentive for Flag States to offer shipowners minimal manning requirements in order to secure their business.
- 10.31. Minimal manning of ships can cause significant problems when a crew member is injured or becomes ill. If a ship is operating at its minimum manning level, the loss of even one crew member can make it impossible to move the ship without risking a Port State Control detention, causing delay and expense. As a result, ITF inspectors sometimes find that crew are denied medical attention or compelled to remain on board when they are ill or wish to leave the ship for some other reason.
- 10.31.1. One extreme example found by ITF Inspector and Australian Coordinator Dean Summers was a crew member with severe mental health issues found tied down to a chair in the crew's quarters. He was being kept on board in order to maintain minimum safe manning levels, but was clearly unable to work.
- 10.32. The distinction between minimum safe manning and operational safe manning must be appreciated and ships should only be able to sail on minimum safe manning in extreme circumstances.
- 10.33. Fatigue on board international ships is supposed to be managed through the ISM safety management system. Yet as will be discussed further in Section 12 of this Submission, systemic problems with undermanning of ships, extremely long hours of work, and very long work contracts undermine these systems and lead to chronic fatigue among seafarers, which has significant ship safety and environmental implications.
- 10.34. Australian guidelines for managing fatigue say that fatigue “may lead to errors and an increase in incidents and injuries”, and say that anything over 50 hours per week is problematic.<sup>146</sup>
- 10.35. In contrast, Australian blue-water ships operate within Australian working hours and standards for the safe management of fatigue. However, there is an additional cost to Australian shipowners for operating ships within these much safer parameters, and Australian ships have two permanent crews that alternate ‘swings’, instead of overworked and fatigued seafarers working on sequential 9-12 month contracts. Unfortunately, the hours of work which international seafarers are compelled to undertake exerts significant downward cost and safety pressures on Australian ships. The safety and environmental implications will be examined further in Section 12 of this Submission.

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<sup>146</sup> Safe Work Australia, Guide for Managing the Risk of Fatigue at Work, November 2013.

**Recommendation 28:** Australia should make the reduction of hours of work and increase of hours of rest a priority at the IMO and in the next round of the STCW convention.

**Recommendation 29:** Australia should lobby for hours of work and not just hours of rest to be recorded and inspected by Port State Control inspectorates.

**Recommendation 30:** The Australian government should consider the level of fatigue experienced by international seafarers to be a significant ship safety and environmental risk, and seek measures to significantly reduce the level of fatigue on international ships trading to Australia and in Australian domestic trades.

**Recommendation 31:** Temporary Licences for Australian coastal trade should not be issued to ships working with only the very minimum number of crew specified in the ship's Minimum Safe Manning document.

**Recommendation 32:** Ships issued a Temporary Licence for Australian coastal trade should conform to Safe Work Australia guidelines for fatigue.

#### 10.36. Wages

10.37. Wages on FOC and international ships are far below those on Australian ships, and far below what is required for Australian workers to survive. The very low level of wages on FOC ships exerts considerable downwards pressure on wages in Australian shipping.

10.38. It is important to understand that while the Maritime Labour Convention goes a long way to upholding human rights on board ships there is no mention of minimum wages. The ITF has a "recommended Minimum" but there is no mechanism to enforce or even to encourage bad operators to pay this rate. The best ratings can hope for is a basic rate of about \$16 USD per day (Able Seaman, used as a benchmark). PSC will confirm the absence of any minimum rate and if asked will confirm zero is the minimum.

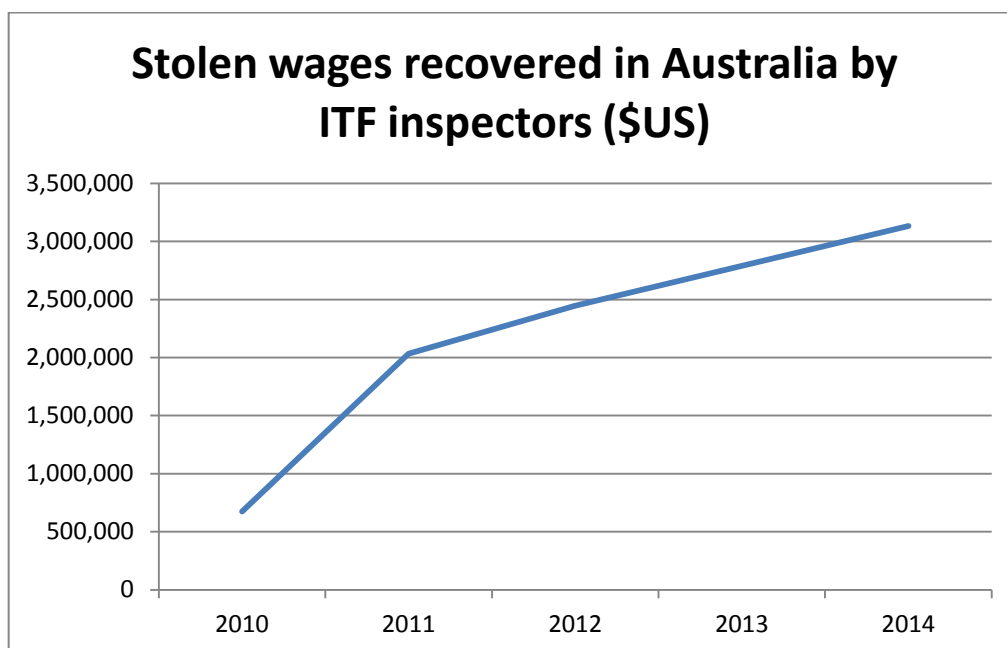
10.39. ITF agreements have been effective in improving seafarers' wages over time on the 12,000 FOC ships where ITF agreements apply. Yet seafarers are frequently subject to unscrupulous employers who do not pay agreed wages, or keep double books (one set to show AMSA and ITF inspectors and one set recording actual payments to the crew).

10.40. It is common for FOC crew not receive their full wage entitlements under an ITF agreement or under other contracted arrangements. Australia's Port State Control Inspectors are only now getting an understanding of how to translate wage records. Prior to the MLC being introduced a little over one year ago, they had no jurisdiction to check wages.



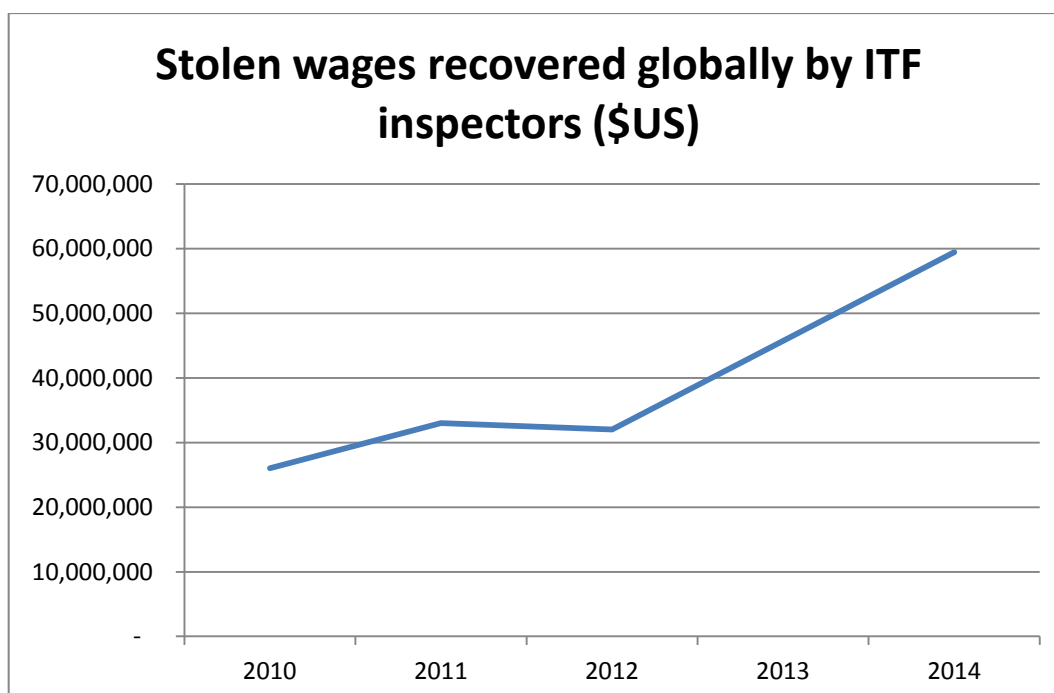
10.41. Very large and rising quantities of stolen wages are being recovered from unscrupulous shipowners and managers by ITF inspectors for international crews. In 2014, \$59 million was recovered globally by the ITF and \$2 million in Australia (Figure 15 and Figure 16).

**Figure 15:** Stolen wages recovered from shipowners and managers for international seafarers by ITF inspectors in Australia.



**Source:** ITF FOC Campaign updates 2010-2014.

**Figure 16:** Stolen wages recovered from shipowners and managers for international seafarers by ITF inspectors globally.



**Source:** ITF FOC Campaign updates 2010-2014.

10.42. Listed in Table 6 are examples of double booking keeping found on ships in Australian ports by ITF inspectors in 2014 and 2015.

**Table 6:** Examples of wages stolen from crew through double bookkeeping and other accounting methods, and amounts recovered for crew members by ITF inspectors in Australia.

Ship	Flag	Date	Amount (\$US)	Period of underpayment	Problem
[REDACTED]	Panama	Aug 2014	\$188,449	6 months	Double books.
[REDACTED]	Panama	Sept 2014	\$105,480	6 months	False record of home allotments.
[REDACTED]	Panama	Jan 2015	\$170,676	4 months	No home allotments.
[REDACTED]	Panama	Jan 2015	\$404,000	12 months	Wages sheet that crew sign does not match wage levels in CBA.
[REDACTED]	Panama	Jan 2015	\$58,000	2 months	Seafarers sign two sheets saying they received wages at two different levels, cash to master account shows paying only lower level.
<b><i>Sakizaya Champion</i></b>	Panama	April 2015	\$141,515		Double books.

**Source:** Australian ITF inspectorate records, paperwork available on request.

10.43. The ship *Blessing SW* offers a particularly clear example of how discrepancies can be discovered. The ship was inspected by the ITF in January 2015, and ITF inspectors examined payroll documents on board the ship. Figure 17 shows the amounts that seafarers are supposed to receive in the 'Total cash' column. For an Able Seaman (AB) this is \$1650 per month.

10.44. Figure **18** is the form that seafarers actually sign to acknowledge receipt of payments. The AB's (number 12 to 14 on the list) receive \$500, only 30% of what they are supposed to receive.

**Figure 17:** 'Minimum Guaranteed Monthly pay scale' collected by Australian ITF inspectors on board the *Blessing SW* (Panama flag) in January 2015.

2014 ITF-NCSU Minimum Guaranteed Monthly Wage Scale 2014 ITF-NCSU 最低月薪表											
											(USD)
Rank	Basic Wage	GOT 85hrs	FOT 50% basic	O.T Rate	Leave	Sub	Bonus	Total Cash	IMO	Retirement Insurance	Total Crew Cost
Master	3080		1540		724	126	258	5728	11	185	6034
Chief Engineer	2854		1427		663	126	238	5308	11	170	5599
Chief Officer, Second Engineer	1865	1042		12.26	434	126	156	3623	10	111	3854
Second Officer, Third Engineer, Radio Officer	1480	827		9.72	343	126	124	2900	10	89	3109
Third Officer, Fourth Engineer	1304	729		8.58	302	126	108	2569	10	78	2767
Electric Engineer	1200	671		7.89	277	126	99	2373	10	72	2565
Bosun, Fitter, Repairer, Chief Cook	958	536		6.30	221	126	79	1920	7	58	2085
AB, Oiler	813	455		5.35	188	126	68	1650	7	47	1804
Steward	662	371		4.36	152	126	54	1365	7	39	1511
Ordinary Seaman, Wiper	598	334		3.93	137	126	49	1244	7	36	1387

\* IMO- This IMO training shall be used to partially cover the costs of pre-joining familiarization and onboard training for crewmembers which are stipulated in IMO conventions. IMO is not payable to the Seafarer

\* Bonus- This is only paid to the seafarer on completion of his contract in accordance with the provisions of the Article 12

\* Leave- 7 days per month

\* Subsistence Allowance- US\$18 (daily)

\* GOT - This is the rate which is to be applied once the FOT of 85 hours has been worked, ILO states minimum overtime rate should be at 1.25 of basic hourly rate.

\* O/T rate: All works performed beyond the guaranteed overtime of 85 hours for ratings shall be compensated by their overtime hourly rate

**Figure 18:** Monthly payroll sheet signed by crew of the *Blessing SW* (Panama flag). Note payment level for AB's (Able Seamen, number 12 to 14 on the list) is \$500, and not \$1650 per month specified in the 'Total Cash' column of the CBA in Figure 17.

**SHIH WEI NAVIGATION CO., LTD.**

2014年12月 (天维轮) 船领薪水 / 年资加级津贴 / 回任奖金

**Vessel: MV BLESSING SW**

编号: BLE-1412 DATE: 2014.12.31

No.	姓名	职务	船领薪	在船天数	应发船领薪	年资	回任奖金	实领薪
01		MASTER	US\$ 4,000.00	31	US\$ 4,000.00	US\$ 15.00	US\$ 150.00	US\$ 4,165.00
02		C/O	US\$ 300.00	31	US\$ 300.00			US\$ 300.00
03		2/O	US\$ 1,900.00	31	US\$ 1,900.00	US\$ 15.00	US\$ 80.00	US\$ 1,995.00
04		3/O	US\$ 1,600.00	31	US\$ 1,600.00		US\$ 50.00	US\$ 1,650.00
05		C/E	US\$ 3,800.00	31	US\$ 3,800.00			US\$ 3,800.00
06		1/E	US\$ 300.00	31	US\$ 300.00			US\$ 300.00
07		2/E	US\$ 1,900.00	31	US\$ 1,900.00			US\$ 1,900.00
08		3/E	US\$ 1,600.00	31	US\$ 1,600.00			US\$ 1,600.00
09		E/E	US\$ 1,600.00	31	US\$ 1,600.00		US\$ 50.00	US\$ 1,650.00
10		BOSUN	US\$ 600.00	31	US\$ 600.00	US\$ 10.00	US\$ 30.00	US\$ 640.00
11		CARP	US\$ 550.00	31	US\$ 550.00	US\$ 20.00	US\$ 20.00	US\$ 590.00
12		AB-A	US\$ 500.00	31	US\$ 500.00			US\$ 500.00
13		AB-B	US\$ 500.00	31	US\$ 500.00			US\$ 500.00
14		AB-C	US\$ 500.00	31	US\$ 500.00			US\$ 500.00
15		D/C	US\$ 150.00	31	US\$ 150.00			US\$ 150.00
16		NO.1 OLR	US\$ 600.00	31	US\$ 600.00			US\$ 600.00
17		OLR-B	US\$ 500.00	31	US\$ 500.00			US\$ 500.00
18		OLR-C	US\$ 500.00	31	US\$ 500.00			US\$ 500.00
19		E/C	US\$ 150.00	31	US\$ 150.00			US\$ 150.00
20		C/CK	US\$ 600.00	31	US\$ 600.00	US\$ 10.00	US\$ 30.00	US\$ 640.00
21		M/B	US\$ 400.00	31	US\$ 400.00			US\$ 400.00
					US\$ 22,550.00	US\$ 70.00	US\$ 410.00	US\$ 23,030.00

2/0:



#### 10.45. Repatriation and abandonment

10.46. An important feature of the MLC is the capacity to repatriate seafarers who have been on board for more than 12 months. Australian ITF inspectors regularly find crew in this situation, and they are frequently coerced to stay on board for even longer.

10.47. ITF inspectors found that the crew of the *Bulk Brazil* had been working on board continuously for 18 months. Privately, the crew told the ITF inspector that they wished to return home. However, following a meeting with the ship's officers, the crew produced papers saying that they wished to stay on board the ship for a further 6 months. The ITF Inspector firmly believes that the crew were coerced to sign this document.

10.48. Sometime shipowners abandon ships with the seafarers still on board, particularly if the ships are in poor condition and there are large quantities of wages or other costs outstanding. Due to Australia's reputation for enforcement, this is not common, but it does happen occasionally. The *Maha Wasi al Qasim* was a Kuwaiti flag cattle ship with 67 crew, who were owed \$2 million in back wages. The ship was abandoned for 12 months in Adelaide, with the crew relying on charity to survive. Such instances put significant stress on seafarers, ITF resources and Seafarers' support groups.

#### 10.49. Hazards, fatalities and injuries

10.50. All studies indicate that seafaring is a very hazardous job. However, these studies have mainly been based in traditional maritime countries, where seafarers have a fatality rate much greater than the average worker. Since the rise of FOCs and the shift to a global labour market for seafarers, it has become much harder to determine casualty rates as many countries simply do not produce reliable statistics. As a result, no reliable global numbers for fatalities in the international shipping industry exist. Flag states have not generally cooperated in gathering information.<sup>147</sup>

10.51. It should be noted that in the international shipping industry, 'casualties' means ship casualties (for example fire or shipwreck), not persons.

10.52. ITF inspectors have observed that international seafarers can frequently be sacked if they develop medical conditions or are injured, even if the condition or injury is employment related. In some cases, commercial pressures mean that seafarers are not given access to proper and timely medical assistance (See examples in Section 15 of this Submission). In other cases, this means that sick or injured seafarers are simply left in a port with little assistance except from the ITF or their local Seafarers' Welfare Centre.

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<sup>147</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.18-23, 36-37.

- 10.53. The difficulty in establishing accurate and comprehensive figures on the number of lives lost at sea can be partly attributed to the degree of compliance by flag states with IMO requirements on reporting serious casualties which include those involving loss of life. As a starting point, this would indicate the relaxed attitude towards accident investigations taken by FOC countries. Furthermore, families of the deceased face significant hurdles to gain access to justice and compensation, thereby once again masking the reality of occupational health and safety aboard ships.
- 10.54. Any accident is likely to involve more than one jurisdiction, including the flag state law, the law of the place of the accident, and/or the law governing the seafarer's contract. The difficulties of establishing where and when to sue means that access to justice can be denied by a number of legal obstacles, including periods of limitation and jurisdiction.
- 10.55. The MLC does have guidelines calling for improved reporting of injuries and diseases by Flag States, and the total population of seafarers (which is critical to assessing injury statistics) but these are not mandatory:

**Regulation 5.1.4 – Inspection and enforcement**

1. Each Member shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures, that ships that fly its flag comply with the requirements of this Convention as implemented in national laws and regulations.
2. Detailed requirements regarding the inspection and enforcement system referred to in paragraph 1 of this Regulation are set out in Part A of the Code.

*Standard A5.1.4 – Inspection and enforcement (Mandatory)*

13. The competent authority of each Member shall maintain records of inspections of the conditions for seafarers on ships that fly its flag. It shall publish an annual report on inspection activities within a reasonable time, not exceeding six months, after the end of the year.

*Guideline B5.1.4 – Inspection and enforcement (non-Mandatory)*

10. The annual report published by the competent authority of each Member, in respect of ships that fly its flag, should contain:

- (a) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into effect during the year;
- (b) details of the organization of the system of inspection;

(c) statistics of ships or other premises subject to inspection and of ships and other premises actually inspected;

(d) statistics on all seafarers subject to its national laws and regulations;

(e) statistics and information on violations of legislation, penalties imposed and cases of detention of ships; and

(f) statistics on reported occupational injuries and diseases affecting seafarers.

10.56. Other sections of the MLC call for the collection of statistics on fatalities and occupational injuries and diseases (Guideline B4.1.4, *Standard A4.3* Guideline B4.3.5).

10.57. To examine the records of the two largest FOC states:

- the Liberia 2014 MLC report<sup>148</sup> is very scanty and only partially fulfils the MLC Guideline:
  - The report, covering 3,126 Liberian-registered ships,<sup>149</sup> is 11 pages long.
  - It does not include the total number of seafarers working on board Liberian ships. This is essential to calculating fatality rates to evaluate the effectiveness of safety systems.
  - 65 deaths on Liberian ships are recorded in the report, 41 of these are recorded as ‘no specific activity being conducted’, which is not a very satisfactory explanation.
  - From the information in the report it appears that the Liberian registry uses a self-report system, where shipowners are required to submit a form to report a fatality. There is no mention of any mandatory investigation of deaths on board, or any further source of information about these deaths.
  - The report says that 17 Liberian registered ships were detained for MLC-related causes, and none of the reported causes of detention appears to be linked to the deaths – detentions are related to wages, hours of rest, living conditions, and food and drinking water.
- The Panama Maritime Authority has no MLC report available on its website, or any other report that contains the information suggested by the MLC. The ITF has emailed the Panama Maritime Authority to request a copy but so far has not received a reply.

**Recommendation 33:** Australia must push for an effective system of mandatory reporting of global seafarer fatalities, and inclusion of fatalities, injuries and diseases in the ship’s accessible Port State

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<sup>148</sup> Liberia Maritime Authority, Maritime Labour Convention (MLC), 2006, Annual Report, Inspection Activities, 1 January 2014 to 31 December 2014.

<sup>149</sup> UNCTAD, Review of Maritime Transport 2014, p.44.



Control record. Reporting requirements for fatalities, at a minimum, should be made a mandatory part of the MLC. A Seafarers' Welfare Levy must provide assistance to organisations assisting seafarers in these circumstances.

**Recommendation 34:** That Australia records all reported suicides and other fatalities on ships trading to, from and around the Australian coast. Suicides are currently not investigated, or go under-investigated.

**Recommendation 35:** The Australian government must recognise that the significantly poorer working conditions on international ships in comparison with Australian ships come at a cost to the safety of shipping around Australia, its environment, and its working conditions. Increased precarity and fatigue of seafarers on international ships undermines safety management systems on board these ships. Lower wages (sometimes unpaid) and single crews working very long hours exert downwards pressures and unfair competition on Australian wages and working conditions. Employers who do not take responsibility for seafarers' injuries and illnesses or abandon seafarers put a considerable burden on Australian organisations who assist seafarers.

#### 10.58. Comparison of Australian and international working conditions

10.59. Table 7 provides a summary of the differences between Australian and international working conditions.

**Table 7:** Comparison of working conditions under the Maritime Labour Convention, ITF agreements, the Australian Seagoing Industry Award, and an MUA EBA.

	<b>MLC</b>	<b>ITF Uniform TCC Agreement 1 January 2015-2017</b>	<b>2015-2017 IBF Framework Agreement</b>	<b>PART A of the Seagoing Industry Award 2010 as at 18 June 2015</b>	<b>PART B of Seagoing Industry Award 2010 as at 18 June 2015</b>	<b>Teekay Ship Management Pty Ltd Seagoing Ratings Enterprise Agreement 2011</b>
<b>Duration of Employment</b>	-	9 months +/-1 month (clause 4.1)	9 months +/-1 month (clause 5)	Permanent	Permanent	Permanent
<b>Basic working hours</b>	EITHER a maximum 72 hours of work per week OR a minimum of 77 hours of rest per week, which allows for 91 hours of work per week	40 hours per week (8 hours per day, Monday to Friday) (clause 5)	No exceed 8 hours per day, Monday to Friday and 4 hours on Saturday. (clause 6)	38 hours per week averaged over 52 weeks. The ordinary hours for operational and maintenance work will be eight hours per day each day of the week. In port, cargo duties or gear turns will, except where it is impractical due to crew shortages, be worked in shifts of not more than 12 hours' duration. (clause 18)	8 hours per day Monday to Friday. All hours worked in excess of eight hours per day from Monday to Friday will be paid as overtime. All hours worked on Saturdays, Sundays and public holidays will be paid for as overtime. (clause 27 )	56 hours per week: Eight hours per day 7 days per week, plus operational requirements (clause 22).
<b>Overtime</b>	-	At least 103 hours of guaranteed overtime. Overtime paid at 1.25 x hourly rate. If overtime records are not kept the seafarers is to be paid 160 hours overtime. (clause 6)	At least 103 hours of guaranteed overtime. Overtime paid at 1.25 x hourly rate. If overtime records are not kept the seafarers is to be paid 160 hours overtime. (clause 7)	Included in the aggregate wage. (clause 13)	All overtime worked will be paid at time and a quarter. (clause 28)	May be required due to operational requirements, included in the salary.

	MLC	ITF Uniform TCC Agreement 1 January 2015-2017	2015-2017 IBF Framework Agreement	PART A of the Seagoing Industry Award 2010 as at 18 June 2015	PART B of Seagoing Industry Award 2010 as at 18 June 2015	Teekay Ship Management Pty Ltd Seagoing Ratings Enterprise Agreement 2011
<b>Total average working hours per week</b>		64 hours per week for approximately 9 months (including 103 hours overtime) 77 hours per week for approximately 9 months (including 160 hours overtime).	64 hours per week for approximately 9 months (including 103 hours overtime) 77 hours per week for approximately 9 months (including 160 hours overtime).	35 hours per week averaged over 1 year (after including the leave factor, clause 20.2)		28 to 42 hours per week averaged over 1 year, depending on operational circumstances
<b>Leave</b>	To be specified in an agreement	7 days per month of service (clause 11)	Minimum of 8 days per month of service (clause 12)	0.926 days leave for each day worked. (clause 20)	8 days for each completed month of service and pro rata for any shorter period. (clause 30)	1 day of leave for each day of duty on a ship (clause 37.1)
<b>Sick pay</b>	-	Up to 130 days. In the case of injury, sick pay continues until disability of a permanent character is declared. Repatriation at company's expense. (clause 22)	Up to 130 days. In the case of injury, sick pay continues until disability of a permanent character is declared. Repatriation at company's expense. (clause 23)	Included in leave factor (clause 20)	As per the NES (up to 10 days paid leave)	14 days pa (clause 33)
<b>Maternity</b>	-	100 days maternity pay at basic salary. Should be disembarked no later than 26 <sup>th</sup> week of pregnancy (clause 23)	100 days maternity pay at basic salary. Should be disembarked no later than 26 <sup>th</sup> week of pregnancy (clause 24)	No but the NES provides for 12 months unpaid leave.	No but the NES provides for 12 months unpaid leave.	6 weeks paid leave, 46 weeks unpaid leave (clause 35)

<b>Swing length</b>	No more than 12 months continuously (Standard A2.5)	Not specified but duration is 9 months +/- 1 month which could be considered the swing length	Not specified but duration is 9 months +/- 1 month which could be considered the swing length	Not specified	Not specified	6-9 weeks (schedule B and C)
<b>Termination</b>	To be specified in an agreement	1 months' notice (clause 18)	1 months' notice (clause 19)	As per the NES. Up to 5 weeks depending on length of service and age.	As per the NES. Up to 5 weeks depending on length of service and age.	As per the NES. Up to 5 weeks depending on length of service and age.
<b>Wage for an AB/IR</b>	To be specified in an agreement	US\$850 plus US\$631 for overtime AUD\$1,948.68 (exchange rate of 0.76 as at 1 July 2015)	To be negotiated	AUD\$4,973 per month (Dry Cargo Cat 2 19,000 to 39,000 ton for manning of 18 using minimum) (clause 13)	AUD\$6,440 per month	AUD\$9,432.13 per month
<b>Allowance for damages to personnel effects</b>	-			AUD\$4,128 (clause 14)	AUD\$4,128 (clause 26)	

**Source:** Table compiled by WG McNally Jones Staff lawyers.

## **11. Minimum employment law standards for international seafarers on Flag of Convenience ships while they are in Australia**

- 11.1. As a result of a High Court judgement, current Australia law requires that the Australian Seagoing Industry Award 2010 Part B (SIA Part B) applies as a minimum on all commercial ships on their third and subsequent domestic voyage on Temporary Licence issued under the *Coastal Trading Act 2012*. The principle is that it is unfair for Australian domestic transport systems (road, rail, or ship) to be in direct competition with companies operating on 3<sup>rd</sup> world conditions of wages and hours of work. The Fair Work Ombudsman is tasked with enforcing these conditions.
- 11.2. The ITF is very concerned that the DIRD administration of aspects of the *Coastal Trading Act 2012* make enforcement of Seagoing Industry Award 2010 Part B (SIA Part B) extremely difficult. Further, we do not believe the Fair Work Ombudsman is the appropriate agency to tasked with enforcing this area of law.
- 11.3. We are aware that on 18 December 2013 and further on 25 November 2014, the MUA's National Secretary Paddy Crumlin has written to Mike Mkdak, Secretary of the Department of Infrastructure and Regional Development, to ask that the details of the Fair Work Ombudsman be included on the Temporary Licence which is required to be displayed on board the vessel, and for other minor administrative changes to be made by DIRD which would facilitate the enforcement of the SIA where it is required by Australian law. On 11 March 2014 and again on 25 January 2015, Mr Mrdak replied, refusing to make such changes.
- 11.4. Moreover, from November 2014, the DIRD has refused to confirm whether a ship holds a Temporary Licence in a timely fashion, referring ITF inspectors to the monthly updates of their website. Therefore, a shipowner wishing to evade their responsibilities under Australian law can claim they do not hold a Temporary Licence and there is no way for the ITF to check whether that claim is true before the ship leaves the port.
- 11.5. The outcome is that DIRD is obstructing seafarers' ability to access their entitlements under law, and ITF inspectors' ability to assist them.
- 11.6. We suggest that it would be a more efficient and effective use of government resources if the responsibility for enforcement of the SIA Part B measures was moved to agencies that are already effectively dealing with the enforcement of minimum labour standards in the international shipping, namely, the Port State Control inspectorate of the Australian Maritime Safety Authority (AMSA)

- 11.7. The FWO currently has responsibility for SIA Part B enforcement through an MOU between AMSA and the FWO signed on 14 January 2013. The recommendation to shift the responsibility for compliance to the PSC inspectorate would require some minor amendments to this MOU. A check of the ship's compliance with the SIA Part B measures could be integrated as an item on the PSC's regular checklist for vessel inspections. Such a change would also require a few minor changes in the administration of the Temporary Licences required under the Coastal Trading Act 2012 (CT Act) for international ships carrying domestic cargo. For example, the Department of Infrastructure and Regional Development currently notify the FWO about every ship carrying Temporary Licence cargo. Such notifications could be redirected to AMSA's PSC inspectorate. There may also be minor changes to the format of the DIRD Temporary Licence that ships are already required to carry on board which could streamline the work of the PSC inspector.
- 11.8. Such a shift could free up resources in the FWO to deal with other important matters. Unfortunately, it is clear to us that the FWO are simply not equipped to deal with the difficulties of enforcing labour standards on ships which may only be briefly in port during anti-social hours. ITF ship inspectors in Australia inspect hundreds of ships each year and have referred many complaints to the FWO, but these are rarely resolved. To cite just one example, the *APL Bahrain* is a container ship that has traded regularly between Australian container ports (Fremantle, Adelaide, Melbourne, Sydney, Brisbane), Singapore and Malaysia since November 2010.
- In August 2011 after it had been trading in Australia for 9 months, an ITF boarded the *APL Bahrain* and found that SIA Part B wages were not being paid, although the ship met the threshold requirements. A complaint was filed with the Fair Work Ombudsman.
  - In February 2012, the Fair Work Ombudsman issued a 'Notice to Produce Records or Documents' to the APL Bahrain and Bermuda Schiffahrtsgesellschaft (Hamburg, Germany).
  - In June 2013, after the vessel had been regularly trading in Australia for 2.5 years, ITF inspectors boarded the ship again and found:
    - No Temporary Licence displayed on board
    - No evidence that SIA wages had ever been paid to crew
    - Crew told ITF inspector they had never been paid SIA wages.
- 11.9. The role of the ITF in making practical checks on these conditions is critical. In some cases, ITF inspectors have found ship operators charging chartering companies for seafarers' entitlements under the SIA Part B, and not passing them on to the crew.

**Recommendation 36:** Responsibility for the enforcement of the Seagoing Industry Award 2010 Part B for international ships carrying domestic cargo should be transferred from the FWO to AMSA's Port State Control inspectorate. This is the Australian Inspectorate with expertise in enforcing safety and labour standards in the difficult area of international shipping. The FWO does not have

the resources and expertise in this area to provide effective enforcement. On every occasion the FWO has procrastinated and remains out of touch with the international maritime industries.

**Recommendation 37:** The *Coastal Trading Act 2012* should be amended to require that it be possible for stakeholders to determine if a vessel is currently trading in Australia under a Temporary Licence. Notification must be in advance, on a public website, and also posted on board.

**Recommendation 38:** The *Coastal Trading Act 2012* should be amended to require that the Temporary Licences required to be posted on board include the contact information for the relevant enforcement agency that crew can contact for assistance - currently Fair Work Ombudsman (or any other agency that takes responsibility).

**Recommendation 39:** The Department of Infrastructure and Regional Development should adopt a less obstructive approach when dealing with inquiries from ITF inspectors and maritime unions about vessels holding Temporary Licences. Currently, the Department refuses to tell ITF inspectors if a ship is operating under a Temporary Licence, which it issues under the *Coastal Trading Act 2012*. This prevents seafarers from accessing entitlements they are due, and prevents problems from being resolved quickly and directly. The ITF and the Australian maritime unions should be considered a social partner for the good of international seafarers' rights.

**Recommendation 40:** Until responsibility is transferred, the FWO must have a transparent reporting system like Port State Control bodies and the DIRD.

**Recommendation 41:** As part of the Inquiry, the Committee should ask the FWO for a list of its investigations and outcomes in relation to international shipping.

## **12. The general standard of Flag of Convenience vessels trading to, from and around Australian ports**

- 12.1. Since the time of the *Ships of Shame* inquiry, the physical standards of international shipping have significantly improved.
- 12.2. The introduction of the Maritime Labour Convention also marks a major step forward in improving seafarers' rights and working conditions.
- 12.3. Despite these improvements, there continue to be very significant differences in the safety of Australian flag and international shipping, which stem from differences in:
  - the organisation of employment,
  - working conditions,
  - crew fatigue,

- safety management on board ships.

- 12.4. Most of these issues were addressed in Section 10. This section will address the broader issue of safety management on board ships and how this interacts with all these conditions.
- 12.5. Safety Management Systems on board ships are based on the IMO International Safety Management Code (ISM Code), required on commercial ships since 2002. This system is used to set and manage procedures on board, including fatigue management procedures. The system is audited by ship's managements and checked by Port State Control inspectors.
- 12.6. The system is very paperwork-heavy, with procedures frequently set by management onshore without the participation of ship's crew. The way it is implemented frequently encourages crew to treat it as an exercise in paperwork compliance, rather than real safety management.
- 12.7. The system contrasts with the safety management system set down by the ILO, which is much closer to the Australian WHS system. This system provides for much greater participation of workers, and for finding practical ways to address problems that arise. It also requires management to take responsibility for addressing problems.
- 12.8. The ILO system relies on safety management taking place within workplaces, with additional motivation being provided by external inspections. In contrast, the ISM Code relies on external auditing and compliance.
- 12.9. Astonishingly, there are no studies or data to examine whether the ISM Code has been effective. In contrast, the ILO system has been studied and found to be effective. It is the basis for most safety legislation in Europe and Australia, where accident and fatality rates have declined over the decades.<sup>150</sup>
- 12.10. The high levels of fatalities that are believed to exist in the shipping industry (despite gaps in data) would suggest that the Code has not been effective.
- 12.11. Part of the reason for the ISM Code's apparent ineffectiveness is that the top-down paperwork and auditing approach allows obvious contradictions to be papered over, usually at the expense of seafarers rather than company managements. So if a ship does not have sufficient crew to create the 'Hours of Rest' paperwork required for audits and Port State Control, seafarers simply have to find creative ways of completing and aligning the paperwork and logbooks, such as in the case of the *Shen Neng 1* (paragraph 9.70 of this Submission). The fundamental issue of undermanning is left unaddressed. If seafarers are found to have not filled in the forms properly, it is frequently them who are disciplined.

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<sup>150</sup> Michael Quinlan, Philip Bohle, and Felicity Lamm, 2010, *Managing Occupational Health and Safety: A multidisciplinary approach*, 3<sup>rd</sup> Edition, p.331-395. David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p. 161-165.



12.12. The precarity of seafarers' employment also undermines the implementation of the ISM Code, which does require shipboard safety meetings. However, seafarers are frequently fearful about speaking up during these meetings as they fear it will hurt their chances of continued employment. A study by Bhattacharya demonstrated the very different messages that seafarers and company managers took away from these meetings. Walters and Bailey have comprehensively highlighted the significant practical and organisational limitations to the ISM Code.<sup>151</sup>

**Recommendation 42:** The Australian government should examine the limitations of the ISM Code as a method for managing safety and fatigue on international ships. It should work internationally to seek to move the safety management systems on international ships to be closer to the ILO and Australian models.

**Recommendation 43:** The Australian government should acknowledge the role that employment relations and working conditions play in having effective safety and fatigue management systems on ships. In this respect, Australian ships are much safer than their international counterparts.

### **13. Methods of inspection of Flag of Convenience vessels to ensure that they are seaworthy and meet required standards**

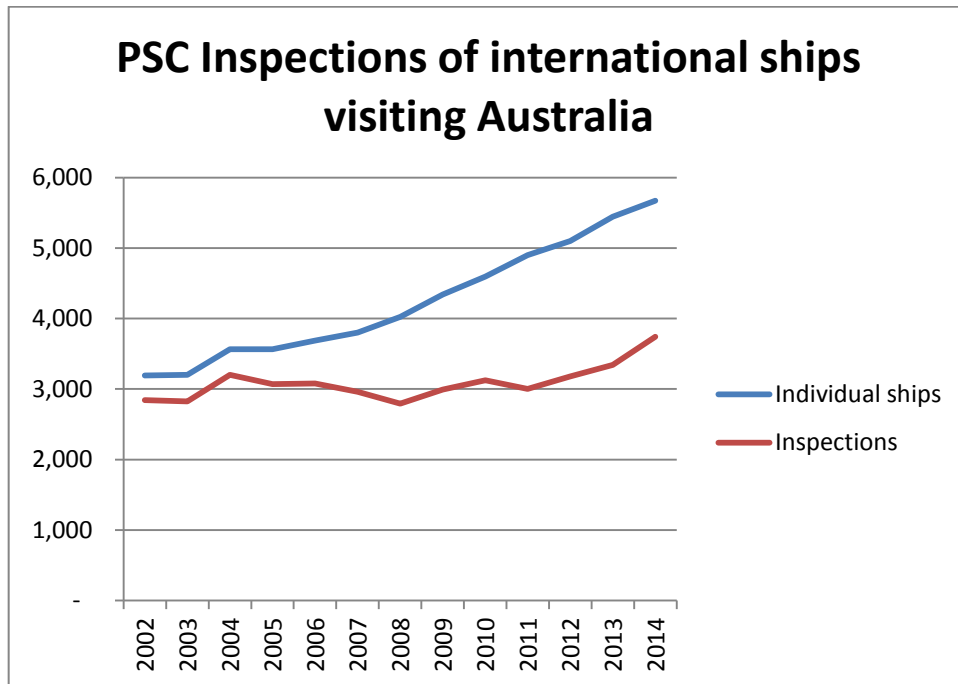
13.1. The proportion of ships visiting Australia which AMSA inspects is declining. In 2002, 89% of the international ships visiting Australia in that year were inspected by AMSA at some point during that year. By 2014, this had declined to 66% of ships (Figure 19).

13.2. The result is that 1,932 individual international ships visited Australia in 2014 without AMSA inspecting them during that year.

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<sup>151</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p. 151-166.

**Figure 19:** Port State Control inspections of individual international ships visiting Australia compared to total ship visits since 2002.



**Source:** Figures compiled by the ITF from AMSA Port State Control reports 2002-2014.

- 13.3. The Australian Port State Control inspectorate does an excellent job. Nevertheless, they deal with a very challenging industry. On one hand, Port State Control inspection is an innovative and effective response to a deregulated and globalised industry. On the other hand, there do appear to be improvements that could be made to the Port State Control inspection systems, as a number of ships which have had significant accidents (for example, the *Rena*) were well known to Port State Control authorities before the accident happened.
- 13.4. In particular, it is very difficult for Port State Control to adequately assess and improve the safety management systems in place on vessels, including critical systems managing fatigue, given the structure of the industry, and the nature of how most international seafarers are employed (see Paragraph 0 of this Submission).
- 13.5. Port State Control inspections, by their very nature, target ships only, and not the management of ships. While this is effective at getting technical problems addressed quickly, it also means that company managements who set company expectations and the parameters for safety management systems may never see Port State Control inspectors. Feedback is provided to company managements only indirectly, and in a fragmented way

across the company's fleet depending on which country different ships visit and are inspected in.<sup>152</sup>

- 13.6. This situation also means that ship's crew are frequently held responsible for what may be organisational problems that need to be addressed at a higher level in the company - for example the manning level or scheduling of ships. Not only does this make it more difficult to solve organisational problems, it can set up confrontational relationship between ship's crew and Port State Control inspectors, and put ship's crew in situations where they feel obliged or are compelled to fill in paperwork that does not reflect the actual situation on board the ship (such as with hours of rest).
- 13.7. In the aviation industry, when problems are found with a company's or country's safety management systems, whole companies or countries are banned – not just an individual planes. For example, Tiger Airways was banned from Australia for 5 weeks in 2011 by the Civil Aviation Safety Authority.<sup>153</sup> Indonesian airlines were banned from the European Union from 2007 to 2009, with the ban lifted from a few companies including Garuda in that year.<sup>154</sup> The US FAA downgraded safety status of Indonesian airlines to Category 2 in 2008, with a reassessment being undertaken in 2015. This more holistic approach could help encourage greater flag state accountability and encourage companies to take a more practical and systemic approach to improving safety management throughout their fleets.<sup>155</sup>

**Recommendation 44:** AMSA should examine the precedent in the airline industry where problematic companies or flag states are banned, instead of just single ships. Such an approach could encourage higher level dialogue between company managements and Port State Control inspectorates, and a more holistic and practical approach to addressing problems with safety management.

**Recommendation 45:** AMSA's Marine Navigation (Regulatory Functions) Levy and its Marine Navigation Levy have not increased 2004, while the CPI has increased considerably since that time. These levies should be increased to maintain funding for AMSA's essential safety services, and in particular, to ensure that resources for Port State Control are increased so that the inspection rate for international ships is in line with historical rates.

**Recommendation 46:** AMSA have done an excellent job implementing the MLC and inspectors and inspections are of high standards. However, in number of trades it is common for a large number of

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<sup>152</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.213.

<sup>153</sup> Tiger Airways ban lifted by Australia, BBC News, 10 August 2011.

<sup>154</sup> Peter Gelling, European Union lifts ban on Indonesian Airlines, *New York Times*, 15 July 2009.

<sup>155</sup> Nadya Natahadibrata, EU keeps partial ban on Indonesia airlines, *The Jakarta Post*, 27 June 2015.

ships to only visit Australia irregularly, which makes it difficult for AMSA to ensure they are all of appropriate standards.

**Recommendation 47:** Until 2009 AMSA included a list of detained ships and the detainable deficiency category in its Annual Report. AMSA should return to this practice as it is presently cumbersome to access this list through AMSA's website.

**Recommendation 48:** Until 2000 AMSA included a section of its Annual Report focussing on the progress made since the Ships of Shame inquiry. Such reporting should be introduced subsequent to this inquiry.

## **14. Exposure to exploitation and corruption of international seafarers on Flag of Convenience ships**

- 14.1. The ITF have well documented examples of the chain of events to employ crew from developing countries and know very clearly that along this chain, seafarers become vulnerable to a number of corrupt processes.
- 14.2. The ITF have championed the MLC and in particular the requirement to regulate crewing or manning agencies.
- 14.3. The Convention states that all private crewing agencies must be regulated and provide an efficient, adequate and accountable service that protects and promotes your employment rights. In particular, it is prohibited to:
  - charge fees to seafarers for finding positions on board
  - make illegal deductions from wages
  - create seafarer blacklists
- 14.4. The ITF is carrying out research into current employment practice but are alerted to the traps that await maritime workers.
- 14.5. Burma provides the most glaring example where almost every seafarer is required to offer 15% of their wages for the first few months to the manning agents as an incentive for the agent to place the seafarer on a ship.
- 14.6. Where the seafarer cannot afford to pay up in front his is required to hand over the deeds of his family house or farm as surety. This is a systemic problem for up to 20,000 workers which the MLC cannot at this stage counter.

- 14.7. Once the seafarers is placed on the ship he may be required to bribe customs, organised crime gangs or corrupt government official even before he gets on board. Once on board he may be faced with a greedy Master or chief officer. Finally he may need to bribe his way into or out of ports visited by the ship.
- 14.8. In the case of the ammonia tanker MV *Wincanton* working exclusively on the Australian coast (Brisbane-Newcastle-Gladstone), the Burmese crew signed for high wages of \$2600 USD per month, as per the Seagoing Industry Award, but confirmed with ITF inspectors they receive less than \$1000 per month.
- 14.9. The move to undermine secure Australian shipping and replace it with a cheap alternative FOCs exposes our national borders to serious but identifiable national security vulnerabilities. The precarious and vulnerable position of seafarers means that others have the ability to put pressure upon them.

## 15. Compensation for deaths and injuries

- 15.1. Adviceline Injury lawyers in Melbourne have had some experience in seeking compensation for international crew injured or killed in Australian waters. Adviceline Partner Bree Knoester has provided the following advice to the ITF based on their experience:<sup>156</sup>

‘In nearly all of the cases there is a lack of information regarding the specifics of the accident and a lack of contact information for next of kin or dependents.

Further, in some of the cases, there is extraordinary delay before seafarers are relayed to a hospital for medical attention.

A central database which recorded all persons working at sea and required immediate notification of all personal injuries at sea would be of great use in increasing accountability and the ability to take steps on behalf of a family after a death or injury.’

- 15.2. The problem of shipowners keeping even basic records of seafarers’ next of kin, and the resulting lack of compensation to family members was highlighted in the following case:

‘In the early 2000s, our office investigated a claim for a Papua New Guinean seafarer who died at sea off the Victorian coast. We retained local lawyers to help locate his family but they could not be found and unfortunately we could not assist. The file has since been archived and we are not able to locate further details.’

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<sup>156</sup> Correspondence dated 21 September 2015.

- 15.3. Adviceline provided the following account of a seafarer who was permanently disabled after being injured off the Victorian coast, following what appear to be very poor standards of medical care provided by his employer, Wilhemsen Ship Management:

Mr San Pedro began working with Wilhemsen Ship Management in around 1990 as a marine fitter. On 25 May 2011, he was working on a marine vessel which had departed from Port Kembla, New South Wales, and was travelling to Port Melbourne. Whilst the vessel was travelling along the Victorian coastline, Mr San Pedro was working alone, performing maintenance work on the main engine exhaust valve. As he was moving part of the exhaust valve back into place, the spindle valve fell on to his left hand, crushing it. He was left with his hand under the spindle valve for a further two hours, as his co-workers were unable to hear his shouts for assistance. Whilst aboard the ship, it was alleged that no medical assistance was provided to Mr San Pedro aside from providing him with a bucket of ice for him to rest his hand in.

The following day, one of the other crew members developed appendicitis, and the boat docked at Appleton Dock to arrange for medical treatment. A stevedore who was working at the time agreed to drive him to the nearby Epworth Hospital. Upon arrival at the Hospital, he was informed that an artery had burst in his hand and he required extensive emergency surgery.

Despite the lack of initial treatment, Mr San Pedro was able to recover most of the movement in his left hand. However, he did not recover his capacity to perform fine movements with his left hand, which was essential to the performance of his role as a marine fitter.

Wilhemsen disputed Mr San Pedro's right to claim compensation in Victoria on the basis that his employment contract required that all claims for compensation be made through the industrial scheme in the Philippines (Mr San Pedro's country of residence). The matter was prepared for hearing but resolved confidentially.

- 15.4. Adviceline also provide the following account of the injuries of Mr. T while employed by an international shipping entity. He spent two full days on board the ship off the coast of New South Wales and Victoria within range of various ports and helicopter evacuation before receiving medical treatment, despite the fact he had sustained burns bad enough to require skin grafts and a lengthy hospitalisation. We do not believe the seafarer has been able to return to work since the injury and Adviceline are in the process of finding out what his local PNG entitlements are before commencing proceedings in Victoria:

'In 1982, Mr T commenced employment as an oiler and motorman with an international shipping entity. He undertook a basic six week course and obtained certificates in Watch Keeping, Steering, Crane Driving, Environment and Conservation, House Keeping and SOLAS, which included fire fighting, survival at sea

and first aid. He renewed his SOLAS Certificate every five years by completing a course at the PNG Maritime College.

Mr T was employed onboard marine vessels by way of discrete contracts for periods of eight months. He would have four months off and then enter into another eight month contract, repeating this cycle.

On 2 September 2013, he signed his last contract with the company for eight months work. The ship generally travelled from Port Moresby, up and down the east coast of Australia, namely Brisbane, Sydney and Melbourne. The ship also travelled to Northern Papua New Guinea, the Solomon Islands and Vanuatu.

Mr T's normal working hours on the ship were between 8 am and 5 pm, with occasional overtime work. He was paid approximately 3,100 Kina per month.

On 30 December 2013, the ship left Vanuatu en route to Melbourne for a proposed arrival time of 10.00am on 9 January 2014.

On 7 January 2014, it was discovered that a T pipe connected to the cooling system for the main engine was leaking and this was causing the main engine to overheat. The ship's engine was shut down and the ship was drifting adjacent to New South Wales but en route to Victorian territorial waters, with co-ordinates 36 20.9S 150 26.8E.

Our client instructs us that at 9:30am, the second engineer, asked him to help replace a leaking T pipe. The engine fitter, and the motorman, were also asked to help with this task. This crew dismantled the T pipe and replaced it with a new one.

Mr T was tasked with tightening the bolts on the flanges once the T pipe was replaced. To do this, he had to stand on the replaced T pipe, which had a diameter of 40 cm and was a metre and a half off the ground.

The chief engineer noticed that the water in the generator was overheating and might cause the generator to shut down. He called to Mr T and asked if it was okay to start the pump and he said "no it is not okay". The second engineer also told the chief engineer that the job was not finished.

Approximately 10 to 15 minutes later, the chief engineer called out again and asked if it was okay to turn the pump on and Mr T yelled out "no, no, no yet, no yet, wait". The second engineer also told the chief engineer that the job was not finished. Although Mr T and the second engineer had told the chief engineer to wait, the chief engineer walked down some stairs and along a hallway and started the pump. The engine room was still quite noisy from the generators and pumps, notwithstanding that the engine was completely shut down.

As the drain pipe flange had not been put on the T pipe and properly sealed, hot water came out from the pipe and hit Mr T in the chest. He suffered severe burns.

On 9 January 2014, the vessel reached Melbourne. Our client instructs that he was told that it was inconvenient to be air lifted to Melbourne because he could not climb down a ladder or have a sling put around him due to his severe burns.

Upon Mr T's arrival in Melbourne, he was given Morphine and taken to the Alfred Hospital. He sustained scalding to his abdomen, thighs and legs. It was estimated that the scalding water was around 65 degrees centigrade.

On 9 January 2014, he underwent skin grafts on his waist and legs.

On 23 January 2014, he was moved to the Caulfield Rehabilitation Hospital and then discharged to have further skin grafts at The Alfred Hospital. He was taking two Panadeine Forte per day, Endone once every six hours when required, Loratachine for the itching and Onza, one tablet three times a day.

In around March 2014, our client returned to Papua New Guinea.'

- 15.5. AMSA did inspect the ship when it arrived in Melbourne, and has followed-up with regular inspections. Deficiencies were found in a number of areas, including the MLC's health protection and medical care provisions. The ship was detained for 1 day. However, the ship's Port State Control records show zero 'casualties' for the ship for that year.<sup>157</sup> There is also no reference to the incident in AMSA's Port State Control Annual Report.
- 15.6. Adviceline are also in the process of seeking compensation for the deaths of six seafarers in employed by the same international shipping entity. The deaths took place on board various ships in their fleet, in Australia and in other countries.

**Recommendation 49:** Applicants for a Temporary Licence to carry Australian domestic cargo must demonstrate to AMSA that they have in place measures for compensation of seafarers for any illness, injury, disability or fatality they experience in the course of their work, or while travelling to or from work. These measures shall meet with Australian community standards.

**Recommendation 50:** AMSA should include records for serious injuries and fatalities on board ships on the Australian coast, of any flag, in its Port State Control reports on international shipping.

**Recommendation 51:** The Australian government should advocate to the ILO that details for seafarers' next-of-kin are required to be included in their Seafarers' Employment Agreement.

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<sup>157</sup> IHS Fairplay 'Sea-web' commercial ship database.



## **16. Legal remedies available to international seafarers and opportunities for improvement**

- 16.1. When international seafarers encounter difficulties in Australia, they usually contact the ITF. The ITF circulates a small booklet each year titled 'Message to Seafarers' which gives the contact information including mobile telephone numbers of ITF inspectors globally. ITF Inspectors receive telephone calls at all hours of the day and night requesting assistance with problems that range from the mundane to those that are immediately life-threatening. Seafarers may also contact or visit a Seafarers' Welfare Centre. ITF inspectors also regularly visit ships. Seafarers also regularly approach wharfies, linesmen, and tug crew who may be able to assist the seafarers' directly or who may contact the ITF for advice.
- 16.2. Frequently, the ITF Inspector is able to resolve the seafarers' issue relatively quickly, often in direct communication with the ship manager or owner. In many cases where there are breaches of the MLC the ITF inspector will contact an AMSA Port State Control inspector. Occasionally, the ITF Inspector may assist the seafarer with contacting the Fair Work Ombudsman or, much less frequently, in using the Australian legal system.
- 16.3. There are very considerable practical difficulties that international seafarers face in trying to seek redress using the Australian legal system. For this reason, ITF inspectors generally seek to have the problem resolved directly, without relying on the legal system. To begin with, the ship that seafarers' work on may spend less than 1 day in port, and seafarers' may have difficulty in getting leave to go ashore. Even if they are able to access legal assistance, WG McNally Jones Staff lawyers advise as follows:

The practical difficulties faced by international seafarers can be grouped into 3 categories: language, location and complexity of the Australian legal system.

### *Language*

Whilst a basic command of the English language is required to obtain the relevant certificates of competency to work in Australian waters it remains the case that when English is not your first language completing forms to access legal entitlements is complicated. It is also a barrier to finding someone who can inform them of their rights.

### *Location*

In order to commence proceedings to enforce a legal right, whether it is in a tribunal such as the Fair Work Commission, or in a Court it is necessary for the seafarer to provide an address for the service of documents that is in Australia. It is then

necessary to attend any hearings or medical appointments in Australia. The cost associated with this travel is not always recoverable and when it is recovery occurs at the end of the matter which could be 12 month later.

### *Complexity of the Australian legal system*

The circumstances as to when the Fair Work Act 2009 applies are complex. Some of the key issues are:

- The need to identify the legal name of the employer in circumstances that all ITF agreements only identify the owner and their maybe a manning agent as well as an employer. If the employer is not an Australian entity and there it has no presence in Australia then Court proceedings will need to be served under the *Convention on Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters Done at the Hague on 15 November 1965*, a complicated and costs process that does not apply to all countries. In addition the convention requires the Court to be satisfied that there is a *prime facie* case rather than an arguable case before leave will be granted for such service to occur. Fortunately following the decision in *Re Maritime Union of Australia & Ors; Ex Parte CSL Pacific Shipping Inc* (2003) 214 CLR 397 in relation to proceedings in the Fair Work Commission it is only necessary to demonstrate that the employer had notice of the proceedings.
- Where the ship was at the relevant time (ie when the injury occurred, when the adverse action occurred etc) If was within the coastal sea then the FW Act applies but if it was further out then the seafarer has to be able to remember for that relevant time:
  - o What the ship was doing – for example was it carrying cargo or empty, serving a fixed platform, attached to the sea bed etc
  - o What was the nationality of the crew;
  - o What was the nationality of the employer;
  - o What was the flag of the vessel;
  - o Was the ship operated by an Australia employer;
  - o Did the ship use Australia as a base; and
  - o Was the vessel operating under a temporary, general, emergency or transitional general licence.

The answers to these questions determine whether the seafarer has an entitlement under Australian law whether it is the *Fair Work Act 2009* or the *Seafarer Rehabilitation and Compensation Act 1992*.<sup>158</sup>

**Recommendation 52:** The Department of Infrastructure and Regional Development should adopt a less obstructive approach when dealing with inquiries from ITF inspectors and maritime unions about vessels holding Temporary Licences. Currently, the Department refuses to tell ITF inspectors if a ship is operating under a Temporary Licence, which it issues under the *Coastal Trading Act 2012*. This prevents seafarers from accessing entitlements they are due, and prevents problems from being resolved quickly and directly. The ITF and the Australian maritime unions should be considered a social partner for the good of international seafarers' rights.

## **17. The quality of the shore-based welfare for seafarers working in Australian waters**

- 17.1. Shore-based seafarers' welfare is delivered through a few providers in Australia. These are effectively the Anglican Based Mission to Seafarers (MTS) and the Catholic equivalent the Apostleship of the Seas (AOS). Hunterlink provides mental health services to international seafarers and has developed world best practice to deliver high quality and immediate mental health services to seafarers in all Australian ports.
- 17.2. It has been reported that many or most of the MTS are operating at an unsustainable loss and there is no coherent management structure of the MTS as an organisation around the country.
- 17.3. These charitable organisations, and the ITF, provide significant support to international seafarers. Unfortunately the industry does not make an appropriate contribution.
  - 17.3.1. Newcastle is the world's biggest coal port, but has substandard facilities for seafarers housed in an old building containing asbestos.
  - 17.3.2. Many seafarers' centres are now a long way from the ships' berths due to port developments and other historical changes in harbour use.
  - 17.3.3. In Melbourne there are significant conflicts between service providers that directly undermine delivery of an essential service.
  - 17.3.4. Enormous coal and iron export ports like the Abbott Point coal terminal, Port Hedland and Dampier operate small seafarers' centres supported by well meaning volunteers with few resources.

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<sup>158</sup> Correspondence from McNally Jones Staff lawyers, 9 September 2015.

- 17.4. The ITF Seafarers' Trust has made a significant financial contribution to seafarers' welfare through awarding grant applications. Between 2005 and 2015, the ITF Seafarers' Trust made 39 separate grants for seafarers' welfare services run by the Mission to Seafarers, Apostleship of the Sea, Hunterlink, Port Welfare Committees and Associations, and other organisations in 18 different Australian ports.
- 17.5. In this period grants from the ITF Seafarers' Trust to Australian organisations and facilities totalled £1,189,173 (approximately \$A 2.5 million at 2015 exchange rates). This is an average grant of approximately \$A 64,100. Grants included the purchase of vehicles to transport seafarers from the ships to welfare facilities, mental health facilities for international seafarers, furniture and equipment for seafarers' welfare facilities.
- 17.6. In the same period, £35 million in grants was made from the ITF Seafarers' Trust to similar international organisations and facilities.<sup>159</sup>
- 17.7. There are examples of the social partners ie: Industry, unions and governments working toward to rationalisation of support, including developing funding models for Seafarers Centres. These are encouraged by the federal government's initiative to support seafarers' welfare under the MLC Australian Seafarers Welfare Council. ASWC through AMSA encourages all ports to form welfare committees to identify opportunities to coordinate seafarers' welfare.
- 17.8. Ports like Newcastle and Port Hedland are developing sustainable realistic funding models to build and maintain world class seafarers centres available to all faiths and independently managed.
- 17.9. The only example of this model currently is the Sydney Seafarers' Centre in Port Botany, historically funded by the ITF with a board, paid managers and staff.

**Recommendation 53:** Internet should be provided to seafarers in Australian ports without cost to seafarers.

**Recommendation 54:** Shore leave is a right for all seafarer and must at all times be available to all seafarers in every port giving regard to operational requirements.

## **18. Progress made in the area since the 1992 House of Representatives Standing Committee and Infrastructure report Ships of Shame: inquiry into ship safety**

- 18.1. The ITF will be providing a full review, to be submitted to Committee in November /December 2015.

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<sup>159</sup> Details for grants supplied by the ITF Seafarers' Trust, August 2015.

## 19. Any related matters: The AMSA levies

19.1. A large portion of AMSA's budget (61%) comes from three levies on ships (Table 8).

19.1.1. The Marine Navigation Levy is a charge against commercial shipping which is levied to recover all costs of operating the Commonwealth's marine aids to navigation system.

19.1.2. The Marine Navigation (Regulatory Functions) Levy is used to fund AMSA's maritime safety regulation and inspection activities, covering safety of both ships and crew.

19.1.3. The Protection of the Sea Levy is a charge against ships based on the "potential polluter pays" principle. The levy applies to vessels which are 24 metres or more in length and have on-board 10 tonne or more of oil in bulk as fuel or cargo. The levy is currently 11.25 cents per net registered ton per quarter, with a minimum of \$10 per quarter.

**Table 8:** AMSA revenue in 2014-15.

AMSA revenue source	2014-15 budget
Marine Navigation Levy: Navigation aids	\$34.3 million
Protection of the Sea Levy: Pollution and emergency response	\$34.1 million
Marine Navigation (Regulatory Function): Shipping regulation including Port State Control.	\$50.1 million
Total from levies	\$118.5 million
Total AMSA revenue (also includes government funding for search and rescue and fees for services)	\$194.4 million

**Source:** Department of Infrastructure and Regional Development, Budget Statements 2014-15, Australian Maritime Safety Authority, Section 3: Explanatory tables and budgeted financial statements.

19.2. These three levies apply equally to international flag and Australian flag ships. The levy per tonne for the Marine Navigation Levy and the Marine Navigation (Regulatory Function) levy has remained the same since 2004.<sup>160</sup>

**Recommendation 55:** The Australian government should reduce the levies on Australian ships payable to the Australian Maritime Safety Authority in recognition of the reduced risk, reduced

<sup>160</sup>AMSA, Levy Ready Reckoner, 2014.

inspection burden, and the important role that the fleet plays in training seafarers and in Australia's national interest.

- The Marine Navigation Levy could be amended so that Australian domestic commercial trading vessels are exempt. The levy revenue could be maintained through a combination of increased charges for foreign registered commercial vessels, extending the charge to Defence for its vessels and imposing the charge on all foreign registered vessels (it is payable each quarter in the case of coastal trading vessels).
- The Marine Navigation (Regulatory Functions) Levy could be restructured so that it was increased for Port State Control functions (foreign registered ships visiting Australian ports) and reduced for Australian registered ships.
- The Protection of the Sea Levy could be amended so that Australian flagged domestic commercial trading vessels pay a reduced rate, while international ships pay a higher fee.

**Recommendation 56:** The Australian government should work with social partners in order to develop a sustainable fiscal model to provide the highest available quality of support to seafarers. A new Seafarers' Welfare Levy should be introduced. The levy revenue should go in part towards the enforcement of the Maritime Labour Convention and in part be administered by AMSA's Australian Seafarers' Welfare Advisory Council to support the delivery of support services to seafarers, including mental health services, seafarers' welfare centres and transportation services in ports around Australia, open to seafarers of all faiths and philosophies. This levy should only be charged to international flag ships as Australian ships already pay for the functions of Fair Work Australia, the Fair Work Ombudsman, Safe Work Australia, Medicare, and Seacare, and the state safety regulators through the Australian taxation system. Seafarers' welfare centres are also overwhelmingly used by the crew of international ships, as crew on Australian ships typically return home every four weeks.

## **Annex A: Australian Marine Orders on hours of work and rest on international ships**

### **Marine Order 28, Issue 4 (Operations standards and procedures)**

#### **14 Minimum hours of rest**

- 14.1 The minimum hours of rest for a seafarer must be:
- (a) 10 hours in any 24 hours; and
  - (b) 77 hours in any 7 days.
- 14.2 The minimum hours of rest may be divided into 2 periods, of which 1 period must be at least 6 hours.
- 14.3 The interval between consecutive periods of rest must not exceed 14 hours.

#### **15 Exceptions from minimum hours of rest**

- 15.1 The operator of a ship may apply to AMSA, in accordance with *Marine Order 1 (Administration)*, for approval of an exception from the rules in section 14 about minimum hours of rest for a seafarer.
- Note* An approval may relate to several seafarers, or classes of seafarers — see *Acts Interpretation Act 1901*, para 23(b) and s 33(3AB).
- 15.2 The decision maker for an application under subsection 15.1 is the Manager, Ship Operations and Qualifications.
- 15.3 The decision maker may approve an exception only if it is in accordance with Section A —VIII /1 of the STCW Code.
- Note* *Marine Order 1 (Administration)* deals with the following:
- making of an application
  - seeking further information about an application
  - the time allowed for consideration of an application
  - notification of a decision on an application
  - review of decisions.

#### **16 Emergency or drill or other overriding operational conditions**

- 16.1 This section applies in any of the following circumstances:
- (a) an emergency, including:
    - (i) a situation affecting the immediate safety of the ship, persons on board or cargo; or
    - (ii) giving assistance to other ships or persons in distress at sea;
  - (b) if a drill is being conducted;
  - (c) essential shipboard work that:
    - (i) cannot be delayed for safety or environmental reasons; and
    - (ii) could not reasonably have been anticipated when the voyage started.
- 16.2 The master may:
- (a) suspend the watch schedule; and
  - (b) personally perform any hours of work necessary while the circumstances exist; and

- (c) require another seafarer to perform any hours of work necessary while the circumstances exist.
- 16.3 As soon as practicable after the circumstances end, the master must:
- (a) if the master performed work in a scheduled rest period while the circumstances existed — take a compensatory rest period; and
  - (b) ensure that any other seafarer who performed work in a scheduled rest period while the circumstances existed is given a compensatory rest period.
- 16.4 If a seafarer's minimum hours of rest are disturbed by call outs to work while the seafarer is on call (eg when a machinery space is unattended), the seafarer must be given a compensatory rest period.
- 16.5 Musters, fire-fighting and lifeboat drills, and drills required by legislation or international instruments, must be conducted in a way that minimises the disturbance of rest periods and does not induce fatigue.

*Note 1* Under section 268 of the Navigation Act, the master of a ship must report certain accidents and dangers to navigation to AMSA. Section 13.2 of *Marine Orders Part 31 (Ship surveys and certification)* prescribes certain matters in relation to reports under section 268.

*Note 2* Section 269B of the Navigation Act enables requirements to be prescribed for reporting about movements of ships. *Marine Order Part 63 (AUSREP)* prescribes the requirements.



## **Annex B: Great Barrier Reef Marine Park Authority Statement on the Shen Neng 1 grounding**

**Published:** 27/05/2015

*The following statement is provided by Great Barrier Reef Marine Park Authority Chairman, Dr. Russell Reichelt:*

On 3 April 2010, the Chinese-registered bulk carrier Shen Neng 1 caused the largest known direct impact on a coral reef by a ship grounding.

When the ship ran aground at Douglas Shoal, north-east of Gladstone, it damaged an area covering 0.4 square kilometres — of this, we estimate 115,000 square metres of the shoal were severely damaged or destroyed.

It also left toxic anti-fouling paint on the reef and on substantial areas of loose coral rubble created by the grounding.

However, despite ongoing attempts to have the ship's owner pay for damages, the Commonwealth was unsuccessful in securing funds from the ship owner or its insurer to clean-up and remediate the site.

This has been a great disappointment, particularly given the nature and scale of the incident, and GBRMPA remains concerned about the long-term health of the shoal.

This is why the Commonwealth has had no alternative but to take legal action in the Federal Court.

The proceeding has been listed for trial for 15 days commencing in April 2016 in Brisbane.

The Commonwealth is seeking damages from the ship's owner for the cost of remediation of the shoal or, as an alternative, orders requiring remediation of the shoal by the ship's owner.

GBRMPA has continued to closely monitor the state of the shoal and to assess what is required for recovery of the shoal.

GBRMPA's first priority in remediating the shoal would be to attempt to remove the remaining anti-fouling paint and residue. This would allow some natural recovery processes to begin.

In the meantime, the Commonwealth remains committed to making every attempt to obtain a negotiated outcome with the ship's owner for the clean-up and remediation of the shoal.

**Name:** GBRMPA media

**Contact:** (07) 4750 0846

## **Annex C: Main environmental conventions and legislation in Australia**

### **1. Relevant Non-IMO Conventions for the protection of the sea:**

- 1.1. *United Nations Convention on the Law of the Sea (UNCLOS)*, 1982, which is an exceedingly detailed and extensive and is made up of 17 parts and 9 Annexes. It determines the rights and responsibilities of nations in respect to their marine environments.

### **2. Relevant IMO Conventions for the protection of the sea:**

- 2.1. Arguably the most important and extensive of the international IMO conventions is the *International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78*. This convention was established to regulate all aspects of ships in respect to the reduction of pollution in the marine environment. It comprises of 6 annexes however, signatory states are only obligated to give effect to annexes I and II.
  - 2.1.1. Annex I refers to discharge of oil overboard.
  - 2.1.2. Annex II deals with the discharge of noxious liquid substances being transported in bulk (ie. bulk chemicals). It should be noted that unlike oil, once chemicals are mixed into the seawater, the removal and clean up of the spill is impossible.<sup>161</sup>
  - 2.1.3. Annex III gives effect to the regulation of harmful substances in packaged form, especially that of bulk cargos in containers.
  - 2.1.4. Annex IV regulates and restricts the discharge of sewage overboard.
  - 2.1.5. Annex V was implemented to regulate the discharge of garbage overboard.
  - 2.1.6. And lastly, Annex VI was introduced to regulate to some degree the cumulative effect of air pollution from ship's emissions.
- 2.2. *International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001* places restrictions on the use of organotin compounds on the hulls of ships for anti-fouling purposes.
- 2.3. *International Convention for the Control and Management of Ships' Ballast Waters and Sediments, 2004* was established to ensure the regulation, prevention and the potential elimination of the worldwide transfer of harmful aquatic organisms and pathogens.

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<sup>161</sup> White, M. *Australian Marine Pollution Laws*, 2007, pg. 46

- 2.4. *International Convention on Civil Liability for Oil Pollution damage (CLC), 1992* requires oil tankers pay the limited premium to a protection and indemnity (P & I) insurer for potential clean up costs and damage caused by an oil spill from a tanker. This premium is capped and calculated based on the relevant tonnage and multiplying it by the units of account (ie. special drawing rights).
- 2.5. *International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (FUND), 1992* was established as it has long been accepted that the financial burden caused in the pollution and damage resulting from an oil spill from a tanker should not only fall on the expense of the ship owner, but also that of the oil industry. This convention requires oil companies to pay a levy based on the amount of contributing oil that they import or export from numerous nations.
- 2.6. *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* ensures the liability of a ship owner for any pollution damage caused from oil spills from the bunker fuel of ships that are not tankers, and for preventative measures taken in relation to the spills. This includes lubricating oil as well as propulsion oil. Up until June 2015, the upper limit of the liability had not been laid down and therefore based on the limits established under the *Convention on the Limitation of Liability for Maritime Claims, 1996*.<sup>162</sup> This became problematic as the upper limit of the Limitation of Liability for Maritime Claims (LLMC) was found to be too low for this type of marine accident.<sup>163</sup>

### 3. Relevant Australian Commonwealth Laws

- 3.1. As Australia is a common law country, international conventions must be enacted through legislation to be legally binding. According to White, there has been an unfortunate trend in which the terms of international maritime conventions that Australia has ratified have been altered, distancing Australia from international uniformity in which the conventions aim to provide.<sup>164</sup> This is problematic as the shipping industry is an exceedingly complex, multinational activity and therefore any and all advances in marine pollution prevention should be carried out homogeneously to ensure that international regulations are met. Brief explanations of relevant Commonwealth legislation (that gives effect to the international conventions previously mentioned) are provided below.<sup>165</sup>
- 3.2. *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* is the main commonwealth legislation giving effect to MARPOL.

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<sup>162</sup> Convention on the Limitation of Liability for Maritime Claims, 1996.

<sup>163</sup> See INCE & Co., Pushing the limits: IMO announces increase in the limits of liability for ship-owners, 2012 <[http://incelaw.com/en/documents/pdf\\_library/legal-updates/new-limits-of-liability-august-2012.pdf](http://incelaw.com/en/documents/pdf_library/legal-updates/new-limits-of-liability-august-2012.pdf)>.

<sup>164</sup> White, M. Australian Marine Pollution Laws, Foundation Press, Australia 2007, p. 112

<sup>165</sup> *ibid.*, p. 112

- 3.3. *Protection of the Sea (Civil Liability) Act 1981* gives force to the provisions of the CLC.
- 3.4. *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* gives effect to the Fund Convention.
- 3.5. *Protection of the Sea (Civil Liability for Bunker Oil) Act, 2008* gives effect to the Bunker Convention.
- 3.6. *Protection of the Sea (Harmful Anti-Fouling Systems) Act, 2006* gives effect to the Anti-Fouling Systems Convention.
- 3.7. *Biosecurity Act 2015*, which according to the Department of Agriculture, will not be implemented in Australia until 2016. This act gives rise to the IMO Ballast Water Convention, 2004, which Australia is a signatory to, but has not been ratified.<sup>166</sup> The Act is established to help prevent the entry of invasive species into Australia's environment.
- 3.8. The *Great Barrier Reef Marine Park Act 1975*, and in particular this section:

#### **61AHA Remediation orders**

(1) If a person has engaged or is engaging in conduct that constitutes:

- (a) an offence against this Act; or
- (b) a contravention of a civil penalty provision;

the Federal Court may, on application by the Minister, make an order (a **remediation order**) requiring the person to take action to prevent, repair or mitigate harm to the environment in the Marine Park that has been, might be or will be caused by the conduct.

(2) In considering whether to grant a remediation order, the Federal Court must have regard to the following:

- (a) the nature and extent of the conduct referred to in subsection (1);
- (b) the nature and extent of the harm to the environment in the Marine Park that has been, might be or will be caused by the conduct;
- (c) the circumstances in which the person engaged in the conduct;
- (d) if the harm was, might be or will be caused in a zone—any objectives specified for the zone in its zoning plan;
- (e) whether the person has previously been found by a court in proceedings under this Act or under any other law of the Commonwealth or a State or Territory to have engaged in any similar conduct;

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<sup>166</sup> See Ballast Water Convention, 2004, pg. 4.

(f) the cost to the person of taking the action;

(g) any benefit (whether or not financial) that the person has obtained or might obtain as a result of engaging in the conduct.

(3) A remediation order may specify the action that a person is to take in general terms (for example, requiring the person to take whatever action is necessary to prevent, repair or mitigate the harm) or in particular terms.

(4) If the Federal Court makes a remediation order, it may also make an order requiring the person to provide security for the due taking of the required action.

**Annex D: All ships used to carry refined petroleum on domestic Temporary Licence voyages in 2014.**

<b>Vessel Name</b>	<b>IMO</b>	<b>TL voyages 2014</b>	<b>Detention? Where, why</b>	<b>2014 AMSA deficiencies</b>	<b>AMSA deficiencies When, why</b>	<b>Flag</b>	<b>Group Owner</b>	<b>Operator</b>	<b>Manager</b>
British Harmony	9288813	17	0	3	2014: 3 (11/11/14 - Radio communication, operation/ maintenance; 5/5/14 - life saving saving appliances - Rescue boats; 5/5/14 - emergency systems - water level indicator) 2008: 1	Isle of Man	Msea Capital Management Ltd - Jersey	BP Shipping Ltd - UK	BP Shipping Ltd - UK
Eships Ruwais	9374296	10	0	1	2014: 1 (14/7/14 - Life saving appliances - Rescue boat inventory)	Hong Kong, China	Cido Shipping HK Co. Ltd. - Hong Kong, China	Blue Lines Shipping Pte Ltd - Singapore	Executive Ship Management Pt - Singapore
British Liberty	9285756	6	0		2015: 16; 2008:	Isle of Man	BP Plc - UK	BP Shipping Ltd - UK	BP Shipping Ltd - UK
Challenge Procyon	9527403	6	0		0	Panama	NYK Line - Japan	Kyoei Tanker Co Lt, Japan	Anglo-eastern Shipmanagement S - Singapore
Eships Maya Name Change: UACC RAS Tanura)	9425318	6	0	2	2015: 2; 2014: 2 (21/3/14 - Fire safety - fire fighting equipment and appliances; water weathertight condition - ventilators, airpipes, casings); 2013: 6)	Liberia	United Arab Chemical Carriers - United Arab Emirates	United Arab Chemical Carriers - United Arab Emirates	Executive Ship Management - Singapore
Gan-tribute	9447744	6	0	1	2014: 1 (14/2/14 - Radio communication - operation of GMDSS equipment); 2011: 1	Bahamas	Fiba Holding AS - Turkey	Handytankers K/S - Denmark	Zenith Gemi Isletmeciligi AS - Turkey

Iver Exporter	9207728	6	0		2010: 1; 2009: 2; 2006: 1; 2004: 1	Netherlands	Vroon Group BV - Netherlands	Iver Ships BV - Netherlands	Iver Ships BV - Netherlands
British Chivalry	9288760	5	0		2013: 2; 2012: 1	Isle of Man	Msea Capital Management Ltd - Jersey	BP Shipping Ltd - UK	BP Shipping Ltd - UK
MS Sophie	9241798	5	0	1	<b>2014: 1 (6/11/14 - Life saving appliances - Operational readiness of lifesaving appliances);</b> 2013: 4; 2011: 1; 2009: 3	Liberia	Chemikalien Seetransport GmbH - Germany	Handytankers K/S - Denmark	Chemikalien Seetransport GmbH - Germany
Stolt Botan	9156553	5	0	16	<b>2014: 16 (7/11/14 - Labour Conditions - Accommodation, recreational facilities, food and catering - Provisions quantity; Labour Conditions - Accommodation, recreational facilities, food and catering - Cold room, cold room cleanliness, cold room temperature; Certificates &amp; Documentation - Crew Certificate - Seafarers' employment agreement (SEA); Life saving appliances - Embarkation arrangement survival craft; Pollution Prevention - MARPOL Annex I - Oil and oily mixtures from machinery spaces; Labour Conditions -</b>	Liberia	NYK Line - Japan	Stolt Tankers BV - Netherlands	Stolt Tankers BV - Netherlands

					<p>Accommodation, recreational facilities, food and catering - Sanitary Facilities; Labour Conditions - Accommodation, recreational facilities, food and catering - Other; Labour Conditions - Accommodation, recreational facilities, food and catering - Training and qualification of ship's cook; ISM - Shipboard operations); (11/1/14 - emergency illumination on board not marked; the launching instruction nearby no.1 L/B on embarkation deck not illuminated by emergency illumination; several illumination lights on embarkation deck out of order; the red signalling light on compass deck out of order; the steering gear in No.1 L/B STBD not in good condition; the spare parts for waterproof electric torch suitable for morse signalling in No.1 L/B on STBD not</p>				
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					available); (11/1/14 - Life saving appliances - Lifeboats); 2012: 3; 2011: 1; 2009: 5; 2008:2; 2007: 3; 2006: 2.				
Stx Ace 10 (Name Change: Grand Ace 10)	9443877	5	0		2012: 2;	Panama	Pan Ocean Co Ltd - South Korea	Pan Ocean Co Ltd - South Korea	STX Marine Service Co. Ltd. - South Korea
Atlantic Blue	9332028	4	0	1	2014: 1 (10/11/14 - Life saving Appliances - Rescue boat inventory); 2009: 3	Hong Kong, China	Cido Shipping HK Co. Ltd. - Hong Kong, China	Daehan Shipping Co. Ltd - South Korea	Fleet Management Ltd-HKG - Hong Kong, China
Challenge Plus (Name change: Minerva Pacifica)	9325831	4	0		2013: 6; 2012: 3;	Malta	Minerva Marine Inc. - Greece	Minerva Marine Inc. - Greece	Minerva Marine Inc. - Greece
Eships Sama (Name change: Angel No.6)	9272709	4	0		2014: 5 (5/11/14 - Labour conditions - Health protection, medical care, social security - Steam pipes, pressure pipes, wires; Labour Conditions - Health protection, medical care, social security - Access/ structural features (ship); Labour conditions - Health protection, medical care, social security -	Panama	Winson Shipping Taiwan Co. Ltd - Chinese Taipei	Winson Shipping Pte Ltd - Singapore	Winson Shipping Taiwan Co. Ltd. - Chinese Taipei

					<b>Access/ Structural features (ship)); (231/3/14 - ISM - Resources and personnel; Structural condition - Cargo tank vent system); 2013: 2; 2008: 7.</b>				
GRAND ACE 11	9443853	4	0		<b>2014: 1 (5/11/14 - Pollution Prevention - MARPOL Annex IV - Sewage treatment plant); 2013: 1.</b>	Panama	Pan Ocean Co Ltd - South Korea	Pan Ocean Co Ltd - South Korea	STX Marine Service Co. Ltd. - South Korea
Great Manta	9648192	4	0		0	Singapore	Bhunjun Group - Mauritius	Adhart Shipping Pte Ltd - Singapore	Executive Ship Management Pte - Singapore
High Endeavour	9272931	4	0		2013: 1 defect	Liberia	d'Amico Tankers Ltd. - Irish Republic	d'Amico Tankers Ltd. - Irish Republic	d'Amico Societa di Navigazione - Italy
Nave Orbit	9399935	4	0		2010: 2 defects	Malta	Navios Maritime Partners LP - Greece	BP Singapore Pte. Ltd. - Singapore	Genel Denizcilik Nakliyat AS - Turkey
Pro Jade	9257711	4	0		<b>2014: 4 (16/9/14 - Life saving appliances - On board training and instructions; emergency systems - abandon ship drills; Safety of navigation - voyage or passage plan); (17/3/14 - Radio communication - satellite EPIRB 406MHz/1.6GHz); 2005: 2.</b>	Panama	SK Shipping Co. Ltd. - South Korea	SK Shipping Singapore Pte. Ltd. - Singapore	SK Shipping Co. Ltd - South Korea

Stolt Suisen	9156577	4	0		2013: 5; 2011: 2	Hong Kong, China	NYK Line - Japan	Stolt Tankers BV - Netherlands	Stolt Tankers BV - Netherlands
Ardmore Seamaster	9271951	3	0		2009: 5; 2005: 2.	Marshall Islands	Ardmore Shipping Services - Irish Republic	Norient Product Pool ApS - Denmark	Thome Ship Management Pte Ltd - Singapore
Challenge Polaris	9426295	3	0		2015: 1 defect	Singapore	NYK Line - Japan	NYK Bulkship Asia Pte Ltd - Singapore	NYK Shipmanagemen t Pte. Ltd. - Singapore
High Courage	9289740	3	0		2015: 1; 2013: 5; 2011: 2; 2010: 2.	Liberia	d'Amico Tankers Ltd. - Irish Republic	d'Amico Tankers Ltd. - Irish Republic	d'Amico Societa di Navigazione - Italy
Pacific Rainbow	9382085	3	0		<b>2014: 3 (13/10/14 - Pollution Prevention - MARPOL Annex IV - Sewage treatment plant; ISM - Shipboard operatiions; Safety of Navigation - Voyage or passage plan);</b> 2009: 1; 2008: 16.	Bahamas	NYK Line - Japan	NYK Bulkship Asia Pte Ltd - Singapore	NYK Shipmanagemen t Pte. Ltd. - Singapore
Turmoil	9479838	3	0		2013: 3 defects	Panama	Transpetrol Ltd. - Bermuda	Transpetrol Maritime Services - Belgium	Transpetrol TM AS - Norway
Axios	9294666	2	0	4	2015: 1; <b>2014: 4 (25/2/14 - Labour conditions - Accommodation , recreational facilities, food and catering - Provisions quality and nutritional value; Fire safety - personal equipment for fire</b>	Greece	Livanos Group - Greece	Sun Enterprises Ltd-LIB - Greece	Sun Enterprises Ltd-LIB - Greece

					<b>safety; life saving appliances - lifeboats; ISM - Maintenance of the ship and equipment); 2011: 2.</b>				
British Security	9285718	2	0		2012: 3; 2009: 1; 2004: 1.	Isle of Man	BP Plc. - UK	BP Shipping Ltd - UK	BP Shipping Ltd - UK
Challenge Peak	9561930	2	0		0	Singapore	NYK Line - Japan	NYK Bulkship Asia Pte Ltd - Singapore	NYK Shipmanagement Pte. Ltd. - Singapore
Challenge Point	9382073	2	0		2013: 1 defect	Panama	Meiji Shipping Group - Japan	NYK Bulkship Asia Pte Ltd - Singapore	NYK Shipmanagement Pte. Ltd. - Singapore
Challenge Prelude	9333278	2	0	1	2015: 3; <b>2014: 1 (18/8/14 - Certificates &amp; documentation - ship certificate - declaration of Maritime Labour Compliance (part I and II); 2012: 4.</b>	Singapore	NYK Line - Japan	NYK Line - Japan	NYK Shipmanagement Pte. Ltd. - Singapore
Challenge Prospect	9310692	2	0		2012: 3 defects	Panama	NYK Line - Japan	NYK Bulkship Asia Pte Ltd - Singapore	NYK Shipmanagement Pte. Ltd. - Singapore
Chang Hang Kai Tuo	9379806	2	0	2	<b>2014: 2 (13/11/14 - Certificates and documentation - Document - Garbage record book ; Fire safety - operation of fire protection systems); 2013: 5.</b>	People's Republic of China	Nanjing Tanker - Corp - People's Republic of China	Nanjing Tanker Corp - People's Republic of China	Nanjing Tanker Corp - People's Republic of China
Eagle Milan	9451460	2	0		0	Panama	Yamamaru Kisen KK - Japan	AET Inc Ltd. - Bermuda	Anglo-eastern Shipmanagement S - Singapore

Eships Liwa	9374284	2	0	1	<b>2014: 1: (12/4/14 - more than one set of load line marks visible on sides of vessel)</b>	Hong Kong, China	Eships - United Arab Emirates	Blue Lines Shipping Pte Ltd - Singapore	Anglo-eastern Shipmanagement S - Singapore
Golden Chie	9566203	2	0	2	2015: 4; <b>2014: 2 (14/5/14 - fire safety - fire doors/ openings in fire-resisting divisions; fire safety - other)</b>	Panama	Sinochem International Corp. - People's Republic of China	Dorval SC Tanks Inc. - Japan	Dorval Ship Management KK - Japan
Golden Taka	9305544	2	0	5	<b>2014: 5 (20/9/14 - Fire safety - fire fighting equipment and appliances);(17/3/14 - Life saving appliances - lifeboats; life saving appliances - lifebuoys incl. provision and disposition; fire safety - other; fire safety - fire doors/ openings in fire-resisting divisions); 2009: 4; 2006: 3.</b>	Panama	Sinochem International Corp. - People's Republic of China	Dorval SC Tanks Inc. - Japan	Dorval Ship Management KK - Japan
Golden Top	9303273	2	1 day detention (19/2/15 - 1 defect: fire safety - fire-dampers)	6	2015: 1; <b>2014: 6 (12/6/14 - fire safety - fire doors/openings in fire-resiting divisions; life saving appliances-lifeboats; the working language not mentioned in log book; high level alaram for cargo control system - not in working condition; some bonding wires for cargo pipe manifolds- missing; IBC code not up to</b>	Panama	Nissen Kaiun Co Ltd - Japan	Nissen Kaium Co Ltd - Japan	Dongkuk Marine Co Ltd - South Korea

					date (just 2007 edition)); 2013: 2.				
Jupiter Express	9536832	2	0		0	Marshall Islands	Nagashiki Shipping Co Ltd - Japan	Mitsui OSK Lines Ltd - Japan	Univan Ship Management Ltd - Hong Kong, China
Justice Express	9473717	2	0	1	2014: 1 (12/11/14 - Labour Conditions - minimum requirements for seafarers - recruitment and placement service)	Panama	Epic Gas Shipholding Pte Ltd - Singapore	Mitsui OSK Lines Ltd - Japan	Epic Ship Management Pte Ltd - Singapore
Norca	9259264	2	0	5	2015: 4; 2014: 5 (20/10/14 - Safety of navigations - nautical publications; Safety of navigation - pilot ladders and hoist/pilot transfer arrangements; life saving appliances - embarkation arrangement survival craft; labour conditions - accommodation, recreational facilities, food and catering - Galley, handlingroom (maintenance).	Panama	Asahi Tanker Co Ltd - Japan	Asahi Tanker Co Ltd - Japan	Asahi Tanker Co Ltd - Japan

Ocean World	9528718	2	2 one day detentions: (2/4/15 - 14 defects: Labour conditions- conditions of employment - others; labour conditions - conditions of employment - other; Safety of Navigation - Voyage of passage plan; Alarms - other; fire safety - remote means of control; fire safety - other; labour confitions - health protection, medical care, social security - guards - fencing around dangerous machinery parts; Fire safety - jacketed high pressure lines and oil leakage alarm; fire safety - fixed fire extinguishing installation; pollution prevention - MARPOL Annex 1 - 15 PPM Alarm arrangments; ISM - shipboard operations.); & (29/7/14)	8	2015: 14; <b>2014: 8 (29/7/14 - Radio communication - facilities for reception of marine safety inform.; Life saving appliances - lifeboats; fire safety - fire-dampers; propulsion and auxiliary machinery - guages, thermonmeters, etc.; fire safety - other ; Pollution Prevention - MARPOL Annex I - Oil Disch. Monitoring and control system; Pollution Prevention - MARPOL Annex IV - Sewage treatment plant; ISM - Maintenance of the ship and equipment).</b>	South Korea	Shinhan Capital Co Ltd - South Korea	Petro Plus Logistics Co Ltd - South Korea	Well Chain Shipping Co Ltd - South Korea
Overseas Alcmarr	9265873	2	0	4	<b>2014: 4 (4/4/14 - Pollution prevention - MARPOL Annex IV - Sewage treatment plant; Working and living conditions -</b>	Marshall Islands	Overseas Shipholding Group - USA	Clean Products International - Chile	V Ships UK Ltd - UK

					<b>working conditions - electrical; Port and starboard free board/hull with poor maintenance; NP 350 Admiralty distance table pacific ocean and 2nd edition 2009 not available on board);</b>				
Port Moresby (Name change: Santa Catalina)	9266097	2	0	8	<b>2014: 8 (16/10/14 - Fire safety - other; fire safety- fire dampers; fire safety - fire dampers; life saving appliances - embarkation arrangement survival craft; life saving appliances - life boats; life saving appliances - lifeboats; life saving appliances - lifeboats; water/weathertight conditions - railing, gangeway, walkaway and means for safe passage); 2013: 3.</b>	Marshall Islands	Unknown? (in 2007 - Ideenkapital GmbH)	Stella Marine Services GmbH - Germany	Stella Navigation GmbH & Co KG - Germany
Seastar	9373656	2	0		0	Malta	Thenamaris Ships Management - Greece	Thenamaris Ships Management - Greece	Thenamaris Ships Management - Greece
Star Lady (Name change: Sulu Sea)	9311531	2	0	4	<b>2014: 4 (16/1/14 - Safety of navigation - compass correction log; Fire Safety - Fire detection and alarm system; radio communication - MF/HF Radio</b>	Liberia (<2014 - Isle of Man)	Eastern Pacific Shipping Pte - Singapore	Eastern Pacific Shipping Pte - Singapore	Eastern Pacific Shipping Pte - Singapore



					Installation).				
Torm Clara	9215098	2	0		0	Denmark (DIS)	TORM A/S - Denmark	TORM A/S - Denmark	TORM A/S - Denmark
Bit Redo	9439175	1	0	1	<b>2014: 1 (1/4/14 - Fire Safety - fire detection and alarm system).</b>	Netherlands	Tarbit Tankers BV - Netherlands	Tarbit Tankers BV - Netherlands	Tarbit Tankers Services BV - Netherlands
Black Sea (Name change: Aurora)	9180217	1	0	2	<b>2014: 2 (6/2/14 - Water/weathertight condition - freeboard marks; life saving appliances - operational readiness of lifesaving appliances); 2013: 1.</b>	2013- Singapore; 2014: Liberia; 2015: Singapore	Omni Offshore Terminals Pte - Singapore	Omni Offshore Terminals Ops - Singapore	Omni Offshore Terminals Ops - Singapore
Chang Hang Fei Yue	9401659	1	0		2011: 2 defects	People's Republic of China	Nanjing Tanker - Corp - People's Republic of China	Nanjing Tanker Corp - People's Republic of China	Nanjing Tanker Corp - People's Republic of China
Chemtrans Rugen	9167186	1	0		2013: 2 defects	Liberia	Chemikalien Seetransport GmbH - Germany	Chemikalien Seetransport GmbH - Germany	Chemikalien Seetransport GmbH - Germany
DL Cosmos	9365386	1	2014: 2 day detention (1/5/14)	6	<b>2014: 6 (1/5/14 - ISM - Shipboard operations; Labour conditions - accommodation, recreational facilities, food and catering - training and qualification of ship's cook; labour conditions - conditions of employment - calculation and</b>	South Korea	Daelin Corp - South Korea	NDSM Co Ltd - South Korea	NDSM Co Ltd - South Korea

					payment of wages - labour conditions - accommodatoin, recreational facilities, food and catering - other; labour conditions - conditions of employment - other; labour conditions - conditions of employment - other); 2013: 4; 2011: 2.				
Dong Jiang	9468815	1	0	7	<b>2014: 7 (19/12/14 - Life saving appliances - lifeboats; safety of navigation - charts; fire safety - fixed fire extinguishing installation; fire safety - oil accumulation in engine room; labour conditions - health protectoin, medical care, social security; Pollution prevention - MARPOL I - 15 PPM Alarm arrangments; fire safety - fire doors/openings in fire-resisiting divisions).</b>	Singapore	Xihe Holdings Pte Ltd- Singapore	Ocean Tankers Pte Ltd - Singapore	Nan Guang Maritime Pte Ltd - Singapore
Eastern Quest	9472749	1	0		<b>0</b>	Panama	Mitsui OSK Lines Ltd - Japan	Tokyo Marine Co Ltd - Japan	Unix Line Pte Ltd - Singapore
Elbtank Denmark	9234680	1	0	1	<b>2014: 1 (14/2/14 - Life saving appliances - lifeboats)</b>	Liberia	TB Marine-Hamburg GmbH - Germany	Handytankers K/S - Denmark	Elbtank Denmark Schiffahrts - Germany

HAI CHI	9390721	1	0	1	<b>2014: 1 (10/11/14 - Life saving appliances - Embarkation survival craft).</b>	Hong Kong, China	China Shipping Group Co - People's Republic of China	China Shipping Tanker Co Ltd - People's Republic of China	China Shipping Tanker Co Ltd - People's Republic of China
He Chi	9611682	1	0		2013: 2 defects	People's Republic of China	China Shipping Group Co - People's Republic of China	China Shipping Tanker Co Ltd - People's Republic of China	China Shipping Tanker Co Ltd - People's Republic of China
High Endurance	9272929	1	0	1	<b>2015: 1; 2014: 1 (13/11/14 - Life saving appliances - lifeboats).</b>	Liberia	d'Amico Tankers Ltd. - Irish Republic	d'Amico Tankers Ltd. - Irish Republic	d'Amico Societa di Navigazione - Italy
Hongbo (Name change: Mr Orestes)	9428384	1	0		2013: 4 defects; 2012: 1;	Marshall Islands (<2015 - Panama)	AMCI Poseidon Capital Mgmt LP - USA	Empire Navigation Inc - Greece (<2015 - Daelim Industrial Co Ltd - South Korea)	Empire Navigation Inc - Greece (<2015 - NDSM Co Ltd - South Korea)
Iver Express	9314208	1	0		2015:02:00	Netherlands	Vroon Group BV - Netherlands	Iver Ships BV - Netherlands	Iver Ships BV - Netherlands
Lichtenstein (Name Change: Mr Pegasus)	9428346	1	0		2013: 6 defects	Marshall Islands (<2015 - Panama)	AMCI Poseidon Capital Mgmt LP - USA	Empire Navigation Inc - Greece (<2015 - Cargill International SA - Switzerland; <2013 - Daelim Industrial Co Ltd - South Korea)	Empire Navigation Inc - Greece (<2015 - NDSM Co Ltd - South Korea)

Navig8 Faith	9379155	1	0	1	<b>2014: 1 (11/6/14 - Labour conditions - accommodations, recreational facilities, food and catering - insulation)</b>	Marshall Islands	Brave Maritime Corp Inc - Greece	Navig8 Pte Ltd - Singapore	Navig8 Shipmanagement Pte Ltd - Singapore
Petrolimex 16		1	Tokyo MOU - 1 day detention 26/5/2015 - 5 defects: fire fighting equipment and appliances; emergency cleaning devices, charts, volatile organic compounds in tankers, shipboard operations	1	<b>2014: 1 (25/8/14 - Fire safety - fire doors/ openings in fire-resisting divisions);</b> 2013: 2; 2006: 5.	Vietnam	Vietnam Govt. - Vietnam	VIPCO - Vietnam	VIPCO - Vietnam
Phoenix Advance	9482627	1	0	1	2015: 11; <b>2014: 1 (8/7/14 - Pollution prevention - MARPOL IV - Other</b>	Singapore	Pheonix Tankers Pte Ltd - Singapore	Mitsui OSK Lines Ltd - Japan	MOL Tankship Management - Europe - UK
Power (Name change: Advantage Anthem)	9472634	1	0		0	Marshall Islands (<2015 Malta)	Advantage Tankers LLC - Switzerland	Shell Western Supply & Trading - Barbados (<2015 - Genel Denizcilik Nakliyatı AS-Turkey)	Shell Western Supply & Trading - Barbados (<2015 - Genel Denizcilik Nakliyatı AS-Turkey)
Pro Emerald	9267948	1	0		2015: 2; 2013: 5; 2011: 1; 2010: 6; 2008: 1;	Panama	SK Shipping Co. Ltd. - South Korea	SK Shipping Singapore Pte. Ltd. - Singapore	SK Shipping Co. Ltd - South Korea
PVT Athena	9208136	1	0		0	Vietnam	Petrovietnam - Vietnam	Petrovietnam Transportation - Vietnam	PVTrans Ship Management Co - Vietnam
Red Sun	9384564	1	0		2015: 4 defects	Liberia	Taihei Kaiun KK - Japan	Zodiac Maritime Ltd -	Zodiac Maritime Ltd - UK

								UK	
Seamaster	9304825	1	0		0	Malta	Thenamaris Ships Management - Greece	Thenamaris Ships Management - Greece	Thenamaris Ships Management - Greece
St Petri	9354272	1	0	1	<b>2014: 1 (19/12/14 - Labour Conditions- Accommodation, recreational facilities, food and catering - other).</b>	Hong Kong, China	Parakou Shipping Ltd - Hong Kong, China	Parakou Shipping Ltd - Hong Kong, China	Parakou Shipmanagement Pte Ltd - Singapore
Stavanger Eagle	9284726	1	Tokyo MOU - 1 day detention 2/10/14 - 7 Defects: schedules for watching personnel, oil record book, emergency fire pump and its pipes, propulsion main engine, other, company responsibility and authority, maintenance of the ship and equipment	3	<b>2014: 3 (1/12/14 - Fire safety - fixed fire extinguishing installation; life saving appliances - lifebuoys incl. provision and disposition; life saving appliances - embarkation arrangement survival craft);</b>	Norway (NIS)	DSD - Norway	DSD Shipping AS - Norway	Wallem GmbH & Co KG - Germany
Stolt Rindo	9314765	1	<b>3 Detentions:</b> (27/5/13 1 day detention - 3 defects: lifesaving appliances - operational readiness of lifesaving appliances; fire safety - fire-dampers; working and living conditions - living conditions - water pipes, tanks); (9/12/11 - 1 day detention - 4 defects:	4	<b>2014: 4 (24/10/14 - Labour Conditions - Accommodation, recreational facilities, food &amp; catering - Laundry, adequate locker; Labour conditions - health protection, medical care, social security - electrical; labour condition - accommodation, recreational facilities,</b>	Panama	Tokumaru Kaiun KK - Japan	Stolt-Nielsen Singapore - Singapore	Dongkuk Marine Co Ltd - South Korea

			<p>Radio Communications - reserve source of energy - GMDSS Radio Installation reserve power batteries defective; Ships Certificates and Documents' - Document of Compliance DoC/ ISM Code - Annual endorsement of ISM DOC not found on board; Food and catering (ILO 147) - Galley Handling rooms - Galley drain gutter tiles many cracked; Radio Communications - other (radio) - MF/HF Radio antenna shackle ring for insulator worn); (2/5/08 - 0 Day Detention - 2 Defects: defective lifeboat release mechanisms: port lifeboat safety cam (aft) not in correct position; hook correct locking condition arrowpoints not apparent/ in accord with mechanism drawings (both boats); SOLAS training manual does</p>	<p><b>food and catering - messroom and recreatinoal facilities; labour conditions - conditions of employment - other);</b> 2013: 5; 2011: 7; 2009: 9; 2008: 2.</p>					
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			not include ship specific instructions for lifeboat release mechanisms).						
Stolt Sakura	9432969	1	0	1	<b>2014: 1 (24/7/14 - Other - other safety in general); 2012: 2; 2011: 1.</b>	Cayman Islands	NYK Line - Japan	Stolt-Nielsen Singapore - Singapore	Stolt Tankers BV - Netherlands
Stx Ace 2	9346079	1	0		0	Panama	Pan Ocean Co Ltd - South Korea	Pan Ocean Co Ltd - South Korea	STX Marine Service Co. Ltd. - South Korea
TH Sound	9370850	1	0	1	<b>2015: 1; 2014: 1 (27/10/14 - Labour conditions - conditions of employment - other).</b>	Singapore	Pusaka Laut Pte Ltd - Singapore	Teekay Shipping Singapore - Singapore	Synergy Maritime Pvt Ltd - India
Value (Name change: Advantage Award)	9470131	1	0		0	Marshall Islands (<2015 Malta)	Advantage Tankers LLC - Switzerland	Shell Western Supply & Trading - Barbados (<2015 - Genel Denizcilik Nakliyatı AS-Turkey)	Shell Western Supply & Trading - Barbados (<2015 - Genel Denizcilik Nakliyatı AS-Turkey)

Vinalines Galaxy	9337339	1	1 detention: 10/10/11 41 defects: International Oil Pollution Prevention (IOPP); Freeboard marks; Freeboard marks; Lights, shapes, sound-signals; Other (MARPOL Annex I); Maintenance of the ship and equipment; Tonnage certificate; Other (STCW); SOPEP; Steering gear; Fixed fire extinguishing installation; Charts; Other (navigation); Inflatable liferafts; Launching arrangements for survival craft; Launching arrangements for survival craft; Other safety in general; Other safety in general; Electrical installations in general; Electrical installations in general; MF/HF Radio installation; Lifejackets incl.provision and disposition; Other (machinery); Other (machinery); Other (machinery);	1	2015: 1; <b>2014: 1 (22/7/14 - Propulsion and auxiliary machinery - other (machinery))</b> ; 2013: 7; 2011: 3.	Vietnam	Vinalines - Vietnam	Vinalines Shipping Co VLC - Vietnam	Thome Ship Management Pte Ltd - Singapore
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			Retention of oil on board; Cargo Ship Safety Construction (including exempt.); Minimum Safe Manning; Document; Engine International Air Pollution Prev. Cert.; Endorsement by flagstate; Oil record book; Hull - corrosion; Other (accident prevention); Other (navigation); Other (navigation); Other (navigation); Other (navigation); Other (navigation); Other (navigation); Inflatable liferafts Oil filtering equipment);						
Zhen Zhu Wan	9406855	1	0	4	2015: 4; <b>2014: 4 (3/9/14 - Water/weathertight condition - cargo ports and other similar openings; certificates &amp; documentation - document - tables of working hours), (27/2/14 - Structural condition - hull damage impairing seaworthiness; life saving appliances - lifeboats; structural condition - bulkheads - operational damage ;</b>	People's Republic of China	COSCO - People's Republic of China	COSCO Southern Asphalt Shipping - People's Republic of China	COSCO Southern Asphalt Shipping - People's Republic of China

					<b>other - other (SOLAS operational); ISM - Maintenance of the ship and equipment);</b> 2012: 2.				
Zhu Jiang	9428865	1	0		2015: 2; 2009: 1	Singapore	Xihe Holdings Pte Ltd- Singapore	Ocean Tankers Pte Ltd - Singapore	Ocean Tankers Pte Ltd - Singapore